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Terror and the Sense of Justice / Aryeh Neier

S. 1437: Reform or Retreat?

DIALOGUE ON THE REVISED CRIMINAL CODE

Politics of the Possible / Anthony Lewis

THE EMERSON-LEWIS LETTERS

Remarks by Senator Kennedy

Testimony of Thomas Emerson

Saints & Killers

WHO WILL BEGIN THE WAR IN SPACE?

Robert C. Aldridge

JUST AND UNJUST WARS/RICHARD FALK

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LETTERS

Moscow aftermath

New York City

As a postscript to my article about the Moscow Book Fair, "Visitors to the Jewish Booth" [*The Nation*, Jan. 28], I thought you might be interested in knowing that *Sovietskaya Cultura* came out in December with a report that the Association of Jewish Book Publishers was part of the "international Zionist conspiracy" and had purposely brought into Russia many "anti-Soviet" books. (Of course, that's nonsense, since they approved all of our books at the opening.) They also said we had a budget of $800 million. (The treasury of the organization, so I am told, stands at $0.). . . .

Joseph S. Drew

the new Sierra Club

New York City

Compliments to Neil Goldstein and Samuel Sage for pointing out the redirection of Sierra Club priorities toward the urban and economic aspects of environmental quality ["The Sierra Club's Job Package: An Environmental Works Program," *The Nation*, Feb. 11]. The rural, old-line conservation image of the "club," while not entirely justified by its actual positions, is in dire need of revamping. The environmental community concerned with rural preservation can no longer ignore the relationship between "landscape and cityscape," or between the environment and economics.

The package proposed is rational: . . . jobs *and* environmental protection. The approach is a sound means of planting the seed money needed for urban revitalization and the stemming of suburban and exurban sprawl. . . . It's time to begin the process of simultaneous environmental protection and economic growth.

Paul Danels, Director, Environmental Jobs Study, National Urban League

Stateville revisited

Joliet, Ill.

The article "Locked Up with Fear: Stateville, Illinois Bastille" by Jay L. Kaplan [*The Nation*, Nov. 19], contains in some substance distortion and fabrication of facts. With reference to correctional officers, not all correctional officers are employed from the inner city of Chicago. Of those who are, we find . . . the majority to be capable men able to fill the responsibilities of the job. . . .

During the interview, Mr. Kaplan asked me who, in my opinion, would make the best administrators of correctional facilities, and I advised that person who has worked his or her way up to a position in administration would be most qualified. He was also advised there are a growing number of persons graduating from college with degrees in Corrections; however, they do not possess experience in Corrections, especially in correctional facilities, and they are handicapped. . . . At no time did I imply directly or indirectly I had no respect for persons who had degrees in Corrections. . . .

Mr. Kaplan states in the article Warden Morris has installed an expensive television security system. Warden Morris has nothing to do with the aforestated system, as it was installed and operational prior to his appointment as warden of this facility.

Mr. Kaplan stated that I have what he terms a "goon squad." The aforementioned is a complete fabrication, as I have not appointed what he terms a "goon squad." All major adult correctional facilities in this state have, as a matter of routine operation, developed a tactical unit which is only used during emergency and riotous conditions.

Mr. Kaplan also indicated my assistant, a candidate for a master's degree in Corrections, set a rattrap in the

(*Continued on page 332*)

EDITORIALS

The Solid Ground of Argument

Despite 382 pages covering some 3,000 criminal offenses, the revised version of the repressive S.1 received only five days of hearings by a Senate Judiciary subcommittee before it sailed through the Senate last January by a vote of 72 to 15.

Now the bill (S.1437) is up again for hearings before the House Subcommittee on Criminal Justice, and aside from the National Committee Against Repressive Legislation's compelling dossier against it (copies may be obtained from NCARL, 1250 Wilshire Boulevard, Suite 501, Los Angeles, Calif. 90017), and Nat Hentoff's urgent alarms in *The Village Voice*, not much has been heard about just what this purportedly ecumenical legislation (backed by Bell, Kennedy and Thurmond) does and doesn't contain.

That is why we have chosen to publish (with their respective permission) the private correspondence of Yale Law Prof. Thomas Emerson and *New York Times* columnist Anthony Lewis (see p. 336), as well as the Lewis column which gave rise to it, and the Emerson testimony which has followed. The bill should reach the House floor sometime in April and we expect to monitor its course and substance in the weeks ahead.

William Goodfellow's exposition of the little-publicized dispute over the vote to extend for three more years the authority of the Overseas Private Investment Corporation (OPIC) (p. 327) seems another case of liberals supporting a measure which arguably entails an illiberal result, in this instance, insuring multinational corporations against risk at the expense of the development needs of the Third World. Again, the proposition is arguable, as attested to by the fact that OPIC's chief sponsor in the House was the generally liberal Rep. Jonathan Bingham (D., N.Y.).

Lastly, note that Richard Falk's essay on Michael Walzer's *Just and Unjust Wars* (p. 341) and William Preston's discussion of *Freedom vs. National Security* by Morton H. Halperin and Daniel Hoffman (p. 343) each in its own way leaps into the ethical fray between the relativists and the absolutists. Falk argues that Walzer's belief that disarmament and nonviolence are utopian goals "leads him to postulate a permanent state of 'supreme emergency' that vindicates security based on immoral nuclear threats to devastate an enemy society." And Preston complains that Halperin and Hoffman content themselves with warning us that "it can happen here," when in Preston's view what they don't understand is that it already has.

Is it really absolutist to argue with Emerson that S.1437 retains too many repressive programs to be acceptable? Is it really absolutist to contend with Goodfellow that OPIC, whomever its prime beneficiary, has survived by virtue of bureaucratic rather than humanitarian imperatives? Is it truly absolutist to hold with Falk and Preston that we too easily accept the unacceptable in times of war *and* peace?

One suspects there is no absolute answer to such questions, a condition which reinforces us in our intent

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to pursue provisional answers (even those that appear absolutist in the short run) with the doggedness Cesar Chavez and his Farm Workers bring to their unequivocal battle against *los monstruos* (p. 330) and to set them forth in these pages until something better comes along.

Tilting at Coal Mines

The third in the series of "tentative" coal labor contracts is much more acceptable than its two predecessors, but it serves to remind the miners and the rest of us of the hard-boiled and careless bargaining positions of the coal operators that brought on the nation's longest strike in the coal fields. Beyond that unpleasant memory, it recalls the unrealistic attitude of the Carter administration as it passively watched the industry trying to take advantage of the disorder in the mine union at a time when the nation's need for coal was great.

The administration had seemed to believe that coal can be mined with bayonets made of paper. And it is characteristic of the President's handling of this whole national industrial crisis that the stiffest bit of paper in the Taft-Hartley armory (a summons to be served on each of the 1,451 district and regional leaders of the UMW) was unaccountably left out of the package sent to the coal fields from Washington. That sloppy omission meant a further delay in "enforcement" of the law's anti-strike provision.

But, of course, the federal government invoked Taft-Hartley without ever meaning really to enforce it, as its actions and words both show. Having come to the end of its inept course of "pressure" tactics, it simply reached into its bag of tricks for a legal wand to wave in front of the miners. These abused and consequently hard-bitten characters refused to be charmed and almost none of them picked up their lamps and picks to go back underground.

The Department of Justice spoke of a "selective level of enforcement" of Taft-Hartley, and Attorney General Bell's strategy was said to consist of "concurrent movements." That is, make a demonstration of applying the law of the land here and there while attempting to push ahead with new contract negotiations in Washington. The President himself, quite incredibly, openly backed this charade of law enforcement. He was for getting a "moderate" number of miners back into the pits in order to "prevent," as he oddly put it, "a crisis evolving in our country."

The President was probably thinking of really large-scale unemployment resulting from power cutbacks when he spoke that line, but the situation in coal and other basic industries must already be called critical. That is so because, no matter what kind of "labor-management" structure in coal is finally patched together in Washington, it will be Jimmy-built and therefore flawed and fragile. From the very beginning Carter has shown the dimmest possible understanding of the real factors at work in the coal fields.

The President, that stern opponent of inflation, has acted ever since he stepped into the bargaining as if only money talked in Appalachia. He assumed that the complicated needs of the miners could be met with wage

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increases. The very first of the three proposed settlements arrived at under the White House aegis contained annual pay increases for three years at a rate of more than 12 percent, about double the current national rate of inflation.

This and subsequent packages which the miners turned down were wrapped around cutbacks in current health and pension arrangements, and they all aimed at greater "discipline" among the miners. Translated, the disciplinary procedures would have sharply limited the mine-by-mine autonomy—the right not to work in a given pit situation that often involved safety—which the miners know has saved many of their lives in their dangerous work. As *Business Week*, hardly a labor organ, put it, the coal operators "tried to change the culture of the Appalachian coal field through a labor contract."

It is not surprising that the coal companies with their long record of absentee mismanagement, have such an ambition, but it is astonishing that a President should adopt this line and follow it to its inevitable bad end. The grail of "business confidence" must be bought dearly. With that elusive goal in mind, Carter has avoided what would have been an even-ended counterbalancing action —the federal seizure of the mines. Apparently he thought that such action would plunge the White House hip-deep into intervention in future labor disputes.

It is most likely that the government will be forced into that role in any case, especially next year, when several major labor contracts come up for renewal. The model Carter has in mind for this industrial nation is about fifty years out of date. The free market he likes to imagine is the one Hoover tried and failed to cope with. All the rigidity and imbalances that have spoiled that dream in this age of conglomerates will not go away for the wishing. And what we have learned from Carter's behavior in the coal strike is that he has a poor grasp of the essential nature of the American industrial system and even less feel for the way the government should act when forced to intervene in what has become a social crisis in one important area of the national economy.

J. EDGAR AND ME

WALTER GOODMAN

The following memoir is the latest in an informal series The Nation *has published from people who have used the Freedom of Information Act to obtain the files compiled on them by one or another of the intelligence agencies. We hope that more such accounts will come to hand. If they do, we shall pass them along to our readers, both for their intrinsic interest and as a reminder that, in this Age of Surveillance, American citizens can at least discover the extent to which their privacy has been invaded.* —The Editors

Early in 1971, a cloud no bigger than a semicolon passed over the desk of J. Edgar Hoover, Director of the Federal Bureau of Investigation. It was me. I know about it because I have lately received 62 pages about me that found their way through the years into FBI files. The charge was 10¢ a page.

Most of the material comes from a routine check that the bureau carried out in 1950 when I was applying for a job with the Central Intelligence Agency. The character references from neighbors in the Bronx are warming. Everyone assured the agent assigned to this tedious work that I was a loyal American with a rational, sound, thoroughly American approach to political, social and economic issues. One wag, probably zealous for my future, told the agent I believed in free enterprise. (I wonder which neighbor it was who, referring to two summers I had spent at home working on a novel, explained that I couldn't find a job and was writing to keep myself occupied between school terms.)

Although the names of those interviewed are deleted, my wife, whom I met and wooed at Syracuse University, says she recognizes her comments. She told the agent that she respected me highly "as a young man of excellent character, very high principles, very conscientious and patriotic and loyal to the United States." How she could have discerned all this, considering the way we spent most of our time together, I cannot imagine.

I got the job and had no security problems (at least none that I was aware of; I have just requested that the CIA send me my file) until 1953, when I began writing for *The New Republic*—on subjects that had nothing to do with my agency duties. A security man explained to me that it might cause distress to Allen Dulles, our chief, if Sen. Joseph McCarthy, then making a general nuisance of himself, were to learn that a CIA type had a connection with that sort of magazine. He said the agency wouldn't mind if I contributed to *The American Mercury*. I left government employ and set out to make a living of sorts writing. Little did J. Edgar Hoover, who knew so much, know that this decision fated me to give him an annoying few minutes eighteen years later.

One magazine with which I came to establish cordial relations was *Redbook*. I served there as an editor in the late 1950s and continued to write for it for some years thereafter. In 1970, I took on a fairly straightforward project. We commissioned the Gallup people to do a survey of seniors in twenty law schools, asking their views on a variety of hot issues, from abortion to pornography to capital punishment. As a kicker, we presented them with a list of prominent people connected with the law and asked the students whom they liked best and least. The most popular were Ralph Nader, Ramsey Clark and William Douglas. The least popular, in this order, were John Mitchell, then Attorney General, Judge Julius Hoffman, who had won celebrity or notoriety by his conduct of the Chicago 8 conspiracy trial, and—yes—FBI Director J. Edgar Hoover. The accompanying article quoted students' criticisms of Mr. Hoover's casual attitude toward individual privacy.

Like the FBI agents who had done a field check on

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me, I was merely citing opinions of others. Was it my fault that the people interviewed by Gallup liked J. Edgar Hoover less than the people interviewed by the FBI liked me? And, anyhow, the article was pretty mild, compared to what was being written about him in, say, *The New Republic* in those days. But Mr. Hoover didn't see it that way.

The editor had mailed him an advance copy of the article for comment, and he replied that he regretted "that some of the opinions expressed reveal a lack of understanding of the role of the FBI." His private response to his subordinates, there in black and white in my files, was: "Henceforth, give Goodman nothing."

I do not claim that I ranked very high on the Director's least-liked list; I'm sure Ralph Nader, Ramsey Clark and William Douglas all topped me. Still, let me confess to a sneaking satisfaction at the thought that once, in collaboration with some future lawyers, I helped give J. Edgar Hoover a bad moment, maybe a touch of heartburn. My FBI file was a bargain at $6.20. □

Preservation of Documents: an Exchange

Terre Haute, Ind.

I have just read John Rosenberg's "Catch in the Information Act" (*The Nation*, February 4). He makes a number of excellent points, but I remain unconvinced that the federal government should retain records for which it has no need . . . [and] there are problems with Rosenberg's position. For example, he wants retention of information so that the Freedom of Information Act (FOIA) can provide full access to agency practices, certainly a desirable goal; but how long should such information be retained? Forever? . . . Amitai Etzioni has characterized the FBI's method of investigation as a "vacuum cleaner approach" (*Washington Post*, September 11, 1977). Clearly, the Privacy Act discourages that approach and mandates the removal of "debris" the method's past use has accumulated. Rosenberg would retain the debris to document the practice. The practice's past use, however, has been adequately documented. That the retention of "debris" might enrich a historian's study . . . does not seem to me to be a compelling argument for maintaining the information at this point. Were there a misuse of the materials and a possible cause for action, the case for retention, of course, would be much more compelling. Absent these conditions, the FOIA's concern is and should be primarily contemporary. Retention of records for historical interests is necessarily a selective process. Historians have always . . . wished that the choices might have been different. Recognizing the frustrations inherent in such research, I still cannot opt for the alternative of total retention which holds the danger of misuse and is not economic.

Mr. Roseberg's account of his experience suggests that he does not really know how to use the FOIA. Simply put, his was not a "reasonable description" of the information he sought. From an administrative perspective, open-ended requests such as his must be handled within "reasonable" boundaries. Without arguing that the FBI's boundaries are in fact reasonable, one must urge FOIA requesters to address separate requests to each agency office likely to have portions of desired information in order to exert more control over boundary definition. . . . I would also quarrel with the assertion (p. 109) that the FBI regards information it releases as not substantial. The fact of release merely indicates the FBI's determination that no legitimate purpose as defined in FOIA's nine exemptions would be served by withholding . . . .

There is an appealing logic in Rosenberg's closing suggestion that subject consent should be obtained before destruction but in operation such an approach would be absurd in extremis. Further, there is simply no privacy interest or right in the retention of information per se. But, does the public at large have such an interest? The public record is replete with evidence of the FBI's past abuses and successes. Further documentation is unnecessary from a public interest standpoint. . . .

WILLIAM H. HARADER
Associate Professor of Political Science
Indiana State University

Arlington, Va.

Professor Harader almost raises an important point, amid several petty ones. "Boundaries," to pick one of the latter, were provided—in the form of dates, addresses, jobs, etc. Another—my alleged assertion that the FBI does not regard any material it releases as substantial—results from simply misreading what I wrote. (The FBI stated that before destruction all "substantial" information would have been forwarded from the field offices to headquarters but, noting the differing criteria of agents and academics, I discussed 91 pages released to me by the Washington Field Office that had not been forwarded. "Although the FBI presumably does not regard these 91 pages as substantial," I wrote, "much of it is in fact important, revealing and useful." Nowhere did I say or even imply that the FBI regards everything it releases as insubstantial.)

Moving on to his main argument, Professor Harader asserts that the FOIA's concern "is and should be primarily contemporary". . . . But it is his and not the Act's concern which is contemporary: . . . he needs to be reminded that the reason for preserving most of the material in government libraries is not because the government needs it but because the people do. As a National Archives brochure puts it, "As the central depository for the Nation's permanently valuable records, the National Archives serves as the Nation's memory," indeed, if the governmental need were the justification for record preservation, we could dispense with most of the manuscript collections in the Library of Congress.

Throughout [Professor Harader's] letter the nature and value of historical understanding are equated with those of a journalistic exposé, but the fact is that FBI records are invaluable over an enormous range of American

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history in the 20th century, not just to document FBI abuses. In addition to what they reveal about the sources, nature, extent and mechanisms of political repression, they would also provide an extremely valuable aid for the study of innumerable individuals and groups—from the Communist Party to the Ku Klux Klan—over the past forty or more years. . . .

Professor Harader's argument is undermined by his concluding endorsement of "the routine destruction of unnecessary records," for of course this destruction is not routine. No one complained about the cost or inconvenience of maintaining these records so long as they were closed to the public, just as we have heard no bureaucratic complaints about the terrible burden of maintaining either the old files of the House Committee on Un-American Activities or the Senate Subcommittee on Internal Security, neither of which is covered by FOIA. Although I will be thought conspiratorial for saying so, there does seem to be more than coincidence linking the government's desire to be rid of some embarrassing files with their recent accessibilty.

This accessibility raises the troubling issue of privacy, and despite his allusions to "the dangers of retention," it is clear that Professor Harader is mainly concerned with cost and convenience. In my view, however, the privacy argument—that is, the argument that Professor Harader failed to make—is by far the more serious. People do not live their lives in order to make books for historians, and I would agree that the subject of an improper investigation should be allowed to keep its contents from public view, at least during his or her lifetime. They should also, however, be allowed to veto its destruction. Professor Harader wouldn't bother the government with the responsibility of determining the subject's wishes. I must confess that I remain unmoved by his concern for bureaucratic convenience. If the government could afford the time and trouble and expense of gathering this information (*that* is what is "absurd in extremis"), then it can think of something besides its convenience in disposing of it.

The old field office files of the FBI by now have already been destroyed, and the FBI awaits permission from Congress to destroy no telling what in the headquarters files themselves. If that permission is granted without any requirement that the subjects of those files be consulted, . . . the government will have erased its tracks across a generation of civil liberties abuses and, as usual, the general public—denied knowledge of the how's, when's, where's and why's—would be the loser.

JOHN S. ROSENBERG

TERROR & THE SENSE OF JUSTICE

ARYEH NEIER

An irony emerges from reading the sickening details of the terrorist slaughter in Israel. It is that Menahem Begin, the symbol of Israeli outrage and bereavement, first achieved prominence as a terrorist.

This irony inspires a question: is terrorism ever justified? Are there neutral principles which can guide us in assessing both the March 11th murders by the Al Fatah and the killings of Englishmen and Arabs by the Irgun Zvai Leumi more than thirty years ago? And, if we are to condemn the Al Fatah and the Irgun equally, what if World War II "partisans" engaged in terrorism in Nazi-occupied countries of Europe? Should their violence also be condemned?

Terrorism is the random infliction of pain on strangers in order to achieve a political end. Those who engage in it have persuaded themselves that the orderly processes of law, justice and national or international order must be disregarded. Their cause is so urgent and so just, they believe, that anything that furthers it is permissible. Resolute in this belief, they kill the 5-year-old child whose grieving parents we saw in news photos last week.

To answer our basic question, I find it useful to contrast terrorism with civil disobedience. The terrorist and the civil disobedient both violate valid laws. In both instances, the violation is justified by the assertion that the cause is urgent and just. In both instances, the violator of the law has usurped the authority to decide when the law must be respected and when it may be violated. But here the similarity ends.

Civil disobedience is nonviolent. It may take forms which cause others inconvenience. Anti-war protesters in the United States blocked the entrances to draft boards and refused to pay taxes; civil rights demonstrators blocked traffic. The laws they broke are valid. Government has every right to enforce these laws, whatever the moral purpose of the violators. But the violators of these laws inflict no pain on strangers.

Another characteristic of civil disobedience is that those who engage in it do not run away. Their protest is announced and it is public. They identify themselves. Their leaders, men like Mohandas Gandhi or Martin Luther King, are in the forefront of the disturbance.

Because they violate valid laws and because they do not run away, participants in civil disobedience expose themselves to punishment. This punishment is an essential part of their protest. In some instances, it may take extralegal forms, as when Bull Connor turned water hoses and dogs on civil rights demonstrators in Birmingham. On other occasions, the punishment is lawful, as when tax refusers were sent to prison.

Whatever form the punishment of civil disobedience takes, its effect is to inflict pain exclusively on the protester. Here, then, is the essential element that distinguishes the civil disobedient from the terrorist. The one seeks to achieve a political end by violating the law and inflicting pain on himself. The other tries to

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realize his political goal by inflicting pain on strangers.

By exposing himself to punishment, the civil disobedient, as philosopher John Rawls put it, "expresses disobedience to law within the limits of fidelity to law, although it is at the outer edge thereof. The law is broken but fidelity to law is expressed by the public and nonviolent nature of the act, by the willingness to accept the legal consequences of one's conduct." When he invites the pain of punishment, the civil disobedient appeals to the conscience of those in power and of the general public. You are not acting justly, he says, and I am willing to endure the pain you inflict on me for violating a valid law in order to convey to you the depth of my feelings. It is a powerful appeal, as Gandhi's movement demonstrated in ending British colonial rule of India and as civil rights protesters and war resisters proved in the United States.

The civil disobedient's appeal is possible only as long as a sense of justice is alive in a society. This does not mean that the society is acting justly. The British were not acting justly in India but Gandhi had faith that a sense of justice was still alive in England, despite the injustices of the British raj. And Gandhi understood that the British were unwilling to be regarded as moral lepers by the rest of the world. Therefore, he appealed to the whole world's sense of justice. Similarly, Americans who nonviolently disobeyed laws in protest against racial segregation and against the war in Vietnam were appealing to world opinion and to a sense of justice that they knew to be still alive in an America that was acting unjustly.

Wherever the sense of justice is alive in a society, we are entitled to say to people with urgent moral causes, if you feel you must violate the law, do it so that you yourself are the sufferer. Expose yourself to pain, if that is what is needed to awaken a dormant sense of justice. Do not inflict pain on others. But when a society has reached such depths of brutality and depravity that we can no longer discover in it any sense of justice, it is of no value for a protester to inflict pain on himself. What possible good could have resulted if protesters against Nazi governments in Europe had inflicted pain on themselves? Even if they had incinerated themselves, in the manner of the Buddhist monks in Vietnam, it would have been useless. We would have no ground, therefore, for telling World War II partisans that terrorism was immoral. All that was left to them in resisting Nazi evil might have been the opportunity to inflict pain on strangers.

The Irgun and the Al Fatah, however, had no such moral justification for terrorism. The Irgun could not claim in the 1940s that no sense of justice existed among the British. At that very moment Gandhi was freeing India by exposing himself to pain. And the Al Fatah cannot say that there is no sense of justice in contemporary Israel. Among Israelis themselves there are outspoken advocates of the rights of the Palestinians.

We have no infallible guide to tell us when a society's sense of justice has perished. But we can identify principles which allow us to denounce this latest carnage in Israel without condemning equally terrorism in all times and in all places. □

THIRD WORLD BUSINESS AS USUAL

THE OPIC GRAVY TRAIN

WILLIAM GOODFELLOW

On February 23 the decisive battle was fought in a yearlong struggle between the nation's largest labor unions, led by the AFL-CIO, and a little-publicized $6 billion federal bureaucracy, backed by the nation's largest multinational corporations. The multinationals won, after a fashion.

The dispute was over a vote to extend for another three years the legislative authority of the Overseas Private Investment Corporation (OPIC), an agency that offers political risk insurance against expropriation, war, revolution, insurrection and similar business inconveniences to American corporations that invest in the Third World.

When the overseas assets of an insured U.S. corporation are nationalized, OPIC steps into the dispute. If the corporation and host country are unable to reach an agreement as to compensation, the loss is borne by OPIC, not by the corporation.

In 1969 Sen. Jacob Javits (R., N.Y.), with the support of the Nixon administration, introduced the bill that resulted in the creation of OPIC as an independent U.S. Government agency. From its inception the program has been opposed by most Democratic members of Congress and by labor unions, who have maintained that OPIC has failed in its stated purpose to promote development in the Third World, while at the same time it has encouraged multinational corporations to move abroad, thus producing a net loss of jobs at home.

During this year's Congressional debate even OPIC's sponsors avoided dwelling on the agency's accomplishments in spreading the wealth in the Third World. Rep. Clarence Long (D., Md.), the influential chairman of the House Appropriations Committee's subcommittee on foreign aid and an outspoken critic of OPIC, attacked the agency during last month's floor debate for its concentration on industries that produced for export: "What we do is turn most of the gravy over to the people in the

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export industries and in the import industries. They are the ones who make the money out of it. The poor worker gets . . . bare wage, when he gets a job at all."

The contradiction inherent in attempting with a single device to help both the needy of the Third World and the large multinational corporations explains why OPIC has failed to carry out its developmental mandate. Multinational corporations, including those insured by OPIC, owe their primary allegiance to their shareholders, and have as their mission the worldwide quest for maximum profits. Needy people have different, often conflicting interests, priorities and needs, that are unaltered by the existence of OPIC.

Some of the projects OPIC has insured or financed in the past three years include:

ITT and TWA safari lodges in Kenya.
Avis rent-a-car and chauffeur services in Malaysia and Singapore.
ITT Sheraton Hotels in India, Brazil and Tunisia.
Gulf & Western Hotels in the Dominican Republic.

Such investments do little to dispel the "ugly American" image among the impoverished abroad. On the contrary, they suggest that OPIC has become more of a service to multinational corporations than an instrument of aid policy.

In Haiti, where the yearly per capita income of $170 is the lowest in the Western Hemisphere, OPIC has issued insurance to Beloved Toys, Inc. for a stuffed doll factory; to the North Jersey Secretarial School, Inc. for a secretarial school, and has extended a $262,106 loan to Habitation Leclerc, a resort where double rooms rent for $160 a day. In the January 1976 *Town and Country*, the owner of Habitation Leclerc is quoted: "I wanted guests not only to feel as though they were vacationing in a Haitian Hideaway but also as though they were stepping back into another century, a lascivious and decadent past that is everyone's innermost desire to return to." For the vast majority of Haitians, the "lascivious and decadent" treats of this Yankee resort amount to little more than a few jobs as cooks and servants and a new spot where beggars can congregate.

From 1974 to 1976 OPIC insurance was concentrated increasingly in firms from *Fortune*'s top 500 corporations and top fifty banks, utilities and transportation firms or their subsidiaries. In these years 41 percent of the new insurance issued by the agency went to the following eleven corporations, in descending order: Dow Chemical, W.R. Grace, J.P. Morgan, Celanese, General Telephone and Electronics, Getty Oil, Bank of America, Standard Oil of Indiana, Weyerhaeuser, ITT and RCA. In 1974 Congress had passed an amendment directing OPIC to give preferential treatment to small businesses, but just the opposite occurred. In 1974, 49 percent of OPIC-insured investors could be found on *Fortune*'s lists; in 1975 the figure was 62 percent, and by 1976 68 percent were among *Fortune*'s largest.

The increasingly heavy concentration of insurance going to such companies raises its own questions about the need for the program. The insured corporations, all with annual sales above $1.9 *billion*, may well be able themselves to absorb the potential losses now guaranteed by the U.S. Government. And these giant enterprises are not incapable of designing their own risk management schemes. The 1973 Senate hearings on OPIC revealed that government subsidization of risk led some companies into behaving abroad more imprudently than they would have done if they had been entirely on their own. In the past three years 61 percent of the dollar volume of OPIC insurance went to projects in six countries: Brazil, the Philippines, South Korea, Indonesia, Taiwan and the Dominican Republic.

It is no coincidence that OPIC funds gravitate toward projects in countries that consistently deny their citizens basic human rights. Each of these countries maintains a level of political stability and "labor discipline" attractive to multinational corporations and to OPIC. However, the cost of achieving a "good investment climate" must be measured in contempt for basic economic, social and political rights. Amnesty International, this year's winner of the Nobel Peace Prize, has compiled extensive documentation of human rights violations in each of the top six countries receiving OPIC insurance.

When OPIC's extension was being debated on the floor of the House in November, Rep. Tom Harkin (D., Iowa) offered an amendment, which was passed, that requires OPIC to refuse to insure projects in countries where disregard of human rights is flagrant. If this legislation is fully implemented—a most unlikely proposition—OPIC will probably lose its top six markets. Congressman Harkin, arguing for his amendment, stated: "If private corporations want to invest abroad, that is all right with me, . . . but if we are going to cloak and drape these private investments with the mantle of the full faith and credit of the United States, . . . the venture [then becomes] identified as a U.S. venture."

From the start, OPIC's main enemy has been organized labor. The largest unions, for the most part AFL-CIO affiliates, have claimed that the agency is part of a package of tax incentives and subsidies that encourage corporations to move production to low-wage areas in the Third World.

As a result of union pressure, the 1974 legislative renewal included a provision directing OPIC to refuse insurance contracts to investors:

> if . . . such an invesment is likely to cause such investor . . . significantly to reduce the number of his employees in the United States because he is replacing his United States production with production from such investment which involves substantially the same product for substantially the same market. . . .

But this "runaway shop" clause is carefully if perhaps clumsily worded to cover only the shifting of a firm's U.S. production to production in its facilities abroad. Often transfers of work are indirect, involving numerous companies which either shift their buying from a U.S. supplier to an overseas producer, or subcontract a stage of produciton to an overseas plant. The result in both cases is a loss of American jobs.

OPIC erodes the bargaining power of U.S. labor in other ways. The six countries where the most OPIC insurance was placed from 1974 to 1976 are all governed by authoritarian regimes which to a large extent deny

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basic trade union freedoms. For example:

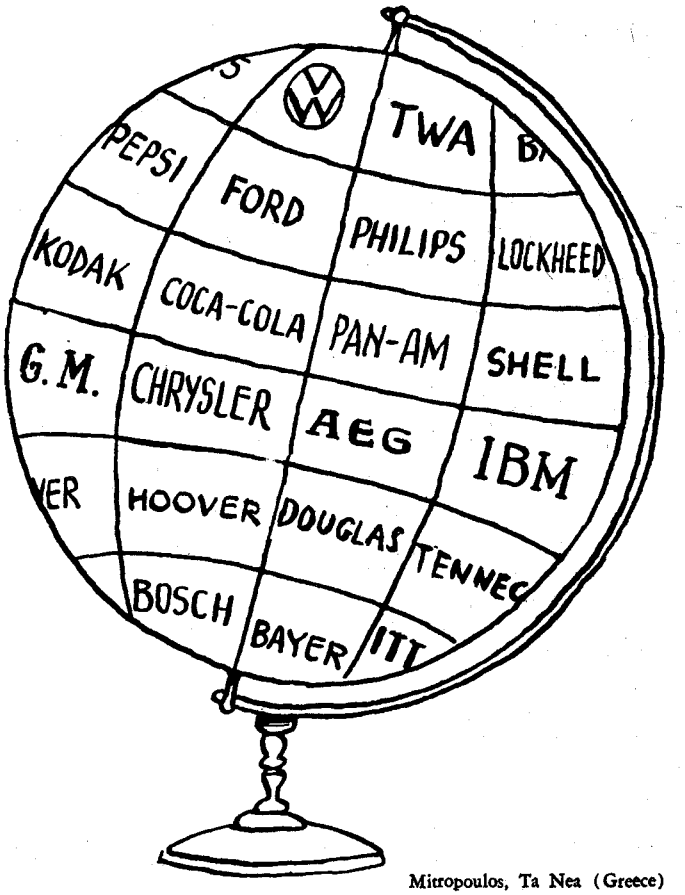
- In Brazil workers have no right to strike or to demand collective bargaining.
- In the Philippines martial law has prohibited strikes and the government is restructuring existing trade unions into officially sanctioned national unions.
- In South Korea workers have no right to strike and the Federation of Korean Trade Unions is government-controlled.
- In Indonesia strikes are outlawed in "essential industries" and civil servants and government employees are forbidden to form unions.
- In Taiwan the Labor Disputes Act of 1943 prohibits strikes and shutdowns during "periods of public emergency," one of which has existed, uninterrupted, since the 1949 Communist victory on mainland China.
- In the Dominican Republic the government has created numerous "free zones" where the right to strike or form unions is prohibited.

American workers cannot compete when repressive foreign governments promise U.S. corporations a cheap, docile labor force. It is a disadvantage often mentioned by labor leaders.

OPIC issues insurance policies for twenty-year periods, in effect guaranteeing that host governments will not change the terms of a corporation's initial investment in that time. A federal agency that insures the status quo in the Third World would seem very appealing to U.S. corporations, but few of the multinationals cared enough about OPIC's fate to lobby actively on the agency's behalf during the just-completed drama in Congress. One reason for this surprising indifference was suggested by historian Joyce Kolko in her *America and the Crisis of World Capitalism*. She argues that the corporation's real interests in the Third World far exceed their book investment costs. "The threat of expropriation is not over the rather piddling sums of initial investment, the loss of which is readily taken off taxes or is initially small due to multiple subsidies. The major threat is to the profits from future operations." And these even OPIC cannot insure.

Although the reauthorization bill squeaked through Congress, 191 to 165, the victory for OPIC was less than complete. In addition to a human rights amendment that could, and certainly should, limit the agency's operations in its largest markets, another amendment that the House accepted by a lopsided margin of 174 votes will further restrict OPIC's worldwide operations. Offered by Rep. Clarence Long (D., Md.), it would require that 50 percent of the total dollar volume of OPIC insurance and financing go to small businesses, defined by the Small Business Administration as firms with total assets of less than $7.5 million. Long's amendment, as he said during the floor debate, put OPIC's "feet to the fire" by requiring compliance with the 1974 directive that the agency give small businesses preferential treatment "to the maximum extent practicable."

Rep. Jonathan Bingham (D., N.Y.), OPIC's chief



Mitropoulos, Ta Nea (Greece)

sponsor in the House, objected strongly: "To reserve 50 percent of OPIC's operations to companies of this size would be, if you will, to make the program totally unworkable. If OPIC is limited to 50 percent and cannot get enough small businesses of the limited size defined in the amendment to take an interest in investing overseas, then they cannot operate at all."

Bingham is an unlikely champion of a cause so unpopular with the AFL-CIO, whose Political Action Committee has given him a near-perfect rating over the past five years. He feels that the split over OPIC will widen in the liberal ranks as labor becomes, in his opinion, increasingly protectionist. Nevertheless, Bingham's aides admit that the Congressman came down only narrowly on the side of OPIC. However, with the Carter administration and the International Economic Policy subcommittee, of which Bingham is chairman, backing OPIC, it became his job to manage the OPIC bill once it reached the House floor.

The opposition to OPIC was led by Rep. Leo J. Ryan (D., Calif.), who has not voted with labor as often as has Bingham. Although Ryan also stressed the job-loss issue, his central criticism of OPIC was that OPIC "only benefits the rich. For this House to continue to support legislation that helps the rich and then call it foreign aid is a travesty."

An examination of OPIC's seven years of operation confirms Congressman Ryan's charge—any benefit to the needy has been minimal. Further, OPIC has quite clearly failed to comply with the 1974 Congressional directives ordering it to favor small businesses and to expand into a greater number of low-income countries.

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Although the Carter administration formally supported OPIC, President Carter himself never publicly mentioned the agency, and refused to send a letter to House members urging passage of the extension bill.

With such a poor record and so few friends, how did OPIC get Congress to renew its legislative life for another three years? The answer, in part, is that it is almost impossible to kill a bureaucracy once it becomes entrenched in Washington, even when it has outlived, or failed of, its original mandate. OPIC has a big budget, its own stable of high-powered lobbyists, its special-interest groups and a staff of 120 professionals who fought hard to keep their jobs. Congressman Ryan was probably right when he said, "If this agency were not in existence today and if this were a bill to create the agency, I doubt it would get more than fifty votes on this floor." □

SQUARE TOMATOES AND IDLE WORKERS

THE FARM WORKERS' NEXT BATTLE

CESAR CHAVEZ

On February 16, the United Farm Workers appeared before a rare public meeting of the University of California Board of Regents to plead the case of thousands of farm workers who had been displaced by machines developed through U.C. research. Our union does not oppose progress, we told the regents; we do not even oppose mechanization. The university should be congratulated on its tremendous breakthroughs in mechanization technology. No one can deny that U.C. has had success in its research programs. They've done a very good half of the job.

But we believe the progress should be complete. The other half of the job is to use this wonderful technology to develop complementary programs for the workers who are losing their jobs. Research should benefit everyone, workers as well as growers.

It is no secret that there is a deep disagreement between the union and the university on the practical results of its research. U.C. claims to have had little, if any, impact on workers; we know mechanization affects workers because we see them unemployed and begging for welfare. So we urged the regents to join with us in asking Governor Brown to appoint an independent blue-ribbon committee to conduct a thorough and impartial study on the effects of U.C. research, if any, on the farm workers, and to issue appropriate recommendations. Governor Brown received a telegram on February 16 from us urging him to name the blue-ribbon panel, and he has not yet responded.

What was the reaction to our initiatives? "The university is an agent of change," said U.C.'s vice president for agriculture, J.B. Kendrick Jr. "It does not decide public policy or compensate losers among conflicting societal interests."

It is difficult to understand how anyone can tag as losers men and women who have had no voice in a headlong rush into mechanization. The farm workers call the machines "*los monstruos*"—the monsters. They see them as mechanical behemoths that threaten to decimate the farm labor work force and turn California into another Appalachia, with an underclass of unemployed workers as poor as any to be found in Kentucky or West Virginia.

Kendrick calls them losers in an impersonal process of change, but in the workers' view it is a cruel irony that the rapid spread of machines—bringing hardship and suffering to countless thousands of displaced men and women—is spearheaded by one of the great institutions of public education in the nation.

In the harvest of thirteen crops alone, more than 120,000 farm worker jobs will be lost to machines and for most of the crops the university is developing farm equipment at an increasingly swift pace. U.C. research projects already underway or nearing completion will mechanize the great majority of such labor intensive crops as wine grapes, raisin grapes, lettuce, fresh tomatoes, peaches, apricots, cherries, melons and celery, to name only a few. Kendrick dismisses the workers as losers, but we believe the university has a moral and social responsibility to the farm workers and to others who are adversely affected by its programs.

History will judge societies and governments—and their institutions—not by how big they are or how well they serve the rich and powerful but by how effectively they respond to the needs of the poor and helpless.

In our boycotts, we always assumed that supermarkets and other corporations must take seriously the needs of society, and especially the needs of the poor, even though they are answerable only to their stockholders for the profits that they earn. We often asked, if individuals and organizations did not respond to poor people who are trying to bring about change by nonviolent means, then what kind of democratic society would we become? And some corporations did respond by joining with millions of Americans in honoring the farm workers' boycotts.

If corporations and other social institutions can recognize their moral responsibility, how much more should we expect from a great university that is supported by all the taxpayers, including the farm workers, particularly when that university is a direct cause of hardship and misery for the poorest of the poor in our society? It is appropriate for the people to expect that an institution responsible for educating their children will be an example to the young by demonstrating through its policies and deeds its commitment to a just and peaceful world. How can the university teach justice and respect for the freedom and dignity of all people when it practices the

Cesar Chavez is president of the United Farm Workers of America AFL-CIO. He lives in La Paz, Keene, Calif.

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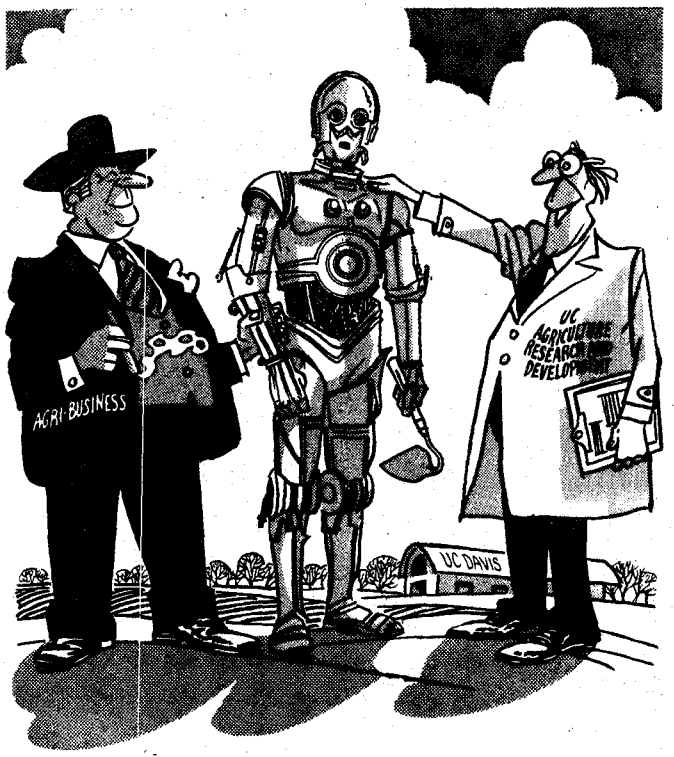
opposite with its money and its people by refusing to live up to its own moral and social obligations?

Contrast these obligations to U.C.'s record in developing farm technology and its anti-farm-worker bias.

Last summer the electronic-eye tomato sorter was widely used for the first time in California tomato fields. The state Assembly's Office of Research, after a thorough study, projected that at least 7,500 farm workers would be displaced by the sorter last year alone.

Displacing the work force in the tomato harvest or industry is an omen for all farm workers in the age of U.C. mechanization research. In 1964, some 50,000 farm workers found jobs in the harvest. By 1972, after implementation of the U.C.-Blackwelder tomato harvester, 32,000 workers had lost their jobs and the work force shrank to 18,000. By 1976, the number of workers had risen to 27,000 as a result of increased tomato acreage, but by then U.C.'s electronic-eye sorter had been introduced. Each sorter reduces the number of workers on a harvest machine from fifteen to twenty to two to six, a 66 to 90 percent displacement. Soon, if the sorter continues to be adopted, only 3,000 farm workers will be left in processing the tomato harvest, a loss of 24,000 jobs from the 1976 level.

When confronted with the effects of its research on farm workers, the university responds that its programs are needed to keep down prices for consumers. But does the consumer really benefit? The mechanization of the tomato harvest appears actually to have increased their price to consumers. Since 1964, the price of a can of tomatoes has risen 111 percent, while the price of all foods went up only 90 percent, and the costs of all other produce only 76 percent.



Renault, Sacramento Bee

"It Uses the Short-Handled Hoe and Won't Join the United Farm Workers."

U.C. agricultural engineers have been able to develop their machines only with the enthusiastic assistance of other U.C. scientists. Most fruits and vegetables are too fragile to withstand the rigors of machine harvesting, so the university has genetically reprogrammed the plants to the needs of the machine. The "square-round" tomato developed at U.C., Davis, and in general the new varieties of tasteless, pulpy, nutritionless fruits and vegetables are the result.

The public underwrites agribusiness' research. Of U.C. mechanization research funding for fiscal years 1975-76, only 6.5 percent was supplied by the agricultural industry. The rest of the money came from public funds: 69.5 percent from the state general fund, 6.4 percent from the federal government, and 17.6 percent from marketing order money.

The taxpayer pays twice for state-supported farm research. He pays, first, when public funds are used to develop the machines with no thought for the men and women whose jobs are wiped out; he pays again when these once gainfully employed workers turn to the state for support and the public is forced to absorb the social costs of mechanization.

The displacement of 120,000 farm workers due to mechanization will raise the California unemployment rate by 1.2 percent. Recent studies and testimony before the Joint Economic Committee of Congress and the House Subcommittee on Crime tie an unemployment rise of 1 percent to an increase in a myriad of social problems, including suicides, mental hospital admissions, crime, alcohol abuse, cardiovascular disease, infant and maternal mortality, automobile accidents, and a substantial loss of state and federal revenue.

Mechanization has been a problem for farm workers for many years. The first shock came in cotton more than twenty-five years ago. As early as 1950, a third of California's cotton crop was harvested by machines. By 1964, 97 percent of the state's crop was mechanized.

Some 100,000 workers found jobs in the cotton fields, more than were employed in cotton than in any other single crop. By the late 1950s, thousands of families who relied on cotton harvesting for their livelihood were left without jobs or a future. Today, in such west San Joaquin Valley farm communities as Corcoran, Hanford, Huron and Mendota, there are thousands of workers who were laid off by the cotton machines and never able to find new jobs. Their children, an entire generation, were raised in these hamlets of unemployment, unable to find work and subsisting on welfare.

Sugar beets, almonds and most of the field crops were also completely mechanized, leaving in their wake thousands of farm workers with nowhere to turn and nothing to look forward to except lives of misery and poverty. These workers learned that mechanization grabs your dignity as well as your job.

We knew mechanization was a serious problem, but the union was too busy trying to get organized and fighting for its life against agribusiness to tackle the mechanization question. But after the California Agricultural Labor Relations Act was passed in 1975, and

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collective bargaining gains were slowly made, the leadership of the union began to see the mechanization issue as the most inevitable battle.

First we tried to deal with the problem in contract negotiations, but there was no uniformity, and it was difficult to expect an employer who agreed with us to compete with other growers in the industry. Next we tried to talk to growers about their responsibility to the workers who contribute so much to building up the wealth of their ranches but are often left stranded when machines are imported. We were unsuccessful.

Then we tried legislation. In the spring of 1977 we introduced two bills written by state Assemblyman Art Torres. One measure required that social impact studies be conducted before public money was spent for mechanization research. A companion bill created a state fund to assist and compensate farm workers displaced by machines. Revenue would be collected through a tax on those who directly profit from mechanization. Both bills were defeated in committee.

An administrative requirement on U.C., similar to the social impact study legislation, was vigorously opposed by the university in legislative budget hearings. The bills will be reintroduced in revised form during the current legislative session.

At the union's Third Constitutional Convention last August in Fresno, the delegates unanimously passed a resolution committing the union to an all-out drive on mechanization. After the convention, the UFW National Executive Board developed a plan to implement the workers' resolution.

We kicked off the campaign with four daylong union-sponsored conferences organized throughout the state in February. More than 2,000 union members and active supporters attended the seminars. They heard union leaders and staff detail the extent of the problem and participated in workshops where they contributed their ideas on how the UFW could best implement its campaign. At each conference, farm workers and city supporters alike pointed to the need to focus attention on U.C.'s research role.

The year after passage of the 1975 Farm Labor Law, U.C.'s Division of Agricultural Sciences produced a pamphlet entitled "Labor Management in California Agriculture: A Practical Guide." Questions posed and answered by the pamphlet included: "Stopping the union is a big job. How could we go about it?" "What about making sure I don't hire pro-union workers?" "All this [the law] is a lot of trouble for the short time every year I need a lot of labor. Maybe I should just mechanize and forget labor problems?"

The pamphlet carried a note saying it was designed for growers who had been unable to attend U.C. Division of Agricultural Sciences classes on the new law.

U.C. Extension offered a class to growers in 1977 on the union and the legal aspects of union representation elections. The *Woodland Daily Democrat* reported (March 31, 1977): "A group of California growers . . . got a lesson in combatting unions at U.C. Davis Extension. Farm Employers Labor Service Manager George Daniels explained how to wage psychological warfare against farm workers' unions battling for the vote of agricultural workers in union certification elections. . . . Daniels explained how to get around ALRB (Agricultural Labor Relations Board) rules if growers found it necessary."

Given this history, was the university's rapid drive to mechanize California farms triggered by the recent successes of the farm workers' movement? In the two and a half years since passage of the law, our union, after winning secret ballot elections, has signed more than 100 contracts with growers. Negotiations, at varying stages of progress, are underway at another 100 ranches, and our union is awaiting certification as bargaining agent at yet another fifty companies. Despite problems with enforcement and maladministration of the Act, the law is alive and functioning, and free collective bargaining is a reality for farm workers, at least in California.

Since it was founded nearly sixteen years ago, the union has achieved some success in raising wages and improving working conditions for farm workers in California. More important, we have destroyed the myth of grower invincibility; farm workers are no longer afraid to stand up for their rights.

The University of California's Kendrick is not the first person to call the farm workers losers. The workers have met such contempt before when they faced seemingly insurmountable odds. And they managed not only to survive but to prevail. □

LETTERS (*Continued from page 322*)

warden's office. Reference to the rattrap was also a fabrication, as my assistant was setting a mousetrap and he will attest to the fact he has never set a rattrap while employed at this facility. . . .

At the close of the article, in describing the electric chair, Mr. Kaplan indicated there is hot water pumped to the head to impede searing. His statement to the aforestated is a complete fabrication of his imagination, as there is no running water or plumbing contained in the death chamber or is water used as he indicated. The direct quote used, "We're all ready to go, hallelujah! It's coming back" is only truthful in reference to the operational condition of the electric chair. The word "hallelujah" is not a word used by me and was certainly not used in his presence. At no time did I state, "It's coming back," as the death penalty is a fact of state law.

In the interest of brevity I have limited my comments to the most outstanding discrepancies in Mr. Kaplan's article. *Nicholas Mellas, Assistant Warden, Operations*
Stateville Correctional Center

New York City

I am flattered that Warden Mellas has taken the time to confirm the major points of my article by presenting this minor bill of particulars as "the most outstanding discrepancies." Nowhere does he take issue with my portrayal of Stateville as a violent, overcrowded, gang-ridden, and unsanitary prison, with wholly inadequate work and training programs, medical and food services, and staff. I stand by my article in all respects but one: had I spent more time at Stateville, I am confident that I would have learned to distinguish a rattrap from a mousetrap.

Jay L. Kaplan

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Who Will Shoot First in Space?

ROBERT C. ALDRIDGE

Defense Secretary Harold Brown told Congress on February 2 that the country must prepare for war in space. "We don't have the capability to respond in kind," he informed the House Armed Services Committee. Having thus brought *Star Wars* to Capitol Hill, Brown asked for double the current space militarization budget for fiscal 1979. But what exactly can Soviet killer satellites do to U.S. spacecraft? And how do U.S. capabilities compare? Also, how does the ability to destroy satellites relate to a pre-emptive first strike? These are critical questions to which those of us who subsidize the arms race must seek the answers.

The campaign to militarize space began a quarter-century ago; Lyndon Johnson started it when he was Senate Majority Leader in the late 1950s. At that time the United States was making plans for the International Geophysical Year 1957-58. Schemes for keeping track of satellites were being developed as early as 1955. Then Sputnik jumped the gun on U.S. launch plans and the Defense Advanced Research Projects Agency (DARPA, then known as ARPA) was established to anticipate technological breakthroughs and make certain they were made by the United States.

In December 1958 DARPA initiated the Spacetrack program; it was transferred to the Air Force a few months later. By October 1959 the Air Force, DARPA and the Navy were working together to develop a space tracking network known as the Space Detection and Tracking System (SPADATS), which became operational under the North American Air Defense Command (NORAD) in 1961. SPADAT's mission is to detect, identify and track all man-made objects in space. Its headquarters was in the Space Defense Center, a part of NORAD's combat operations center buried under 1,000 feet of granite rock at Cheyenne Mountain, Colo.

The Space Defense Center is a three-story building inside one of Cheyenne Mountain's giant caverns. It maintains a computer that catalogues all the 4,000 plus artificial objects now in space and continually updates the orbital characteristics of each of them. The center is mounted on springs to withstand shock from a nuclear blast at ground zero. Cheyenne Mountain, itself, can be sealed with huge blastproof doors and contains all the supplies necessary to maintain operations for thirty days. It has nuclear-survivable communications with all NORAD commands as well as the Strategic Air Command, the Pentagon, the White House and other key units.

An addition to the Space Defense Center which is to become operational this year will increase the capacity to catalogue objects in space and provide a satellite attack warning system. If it is determined that an American craft is threatened, an alarm will be sent to the appropriate commander. The warning system will also predict where every satellite will be at any time and provide continuously updated targeting information against any hostile spacecraft.

Although all kinds of sensors spread all over the globe contribute to SPADATS, the backbone of the system is the Air Force's Spacetrack network. Most significant in that network are two huge phased array radars whose thousands of elements scan 120 degrees of sky from horizon to zenith in millionths of a second. The one at Eglin Air Force Base in Florida has a southward facing panel as high as a thirteen-story building and as long as a city block. Another, called Cobra Dane, is on Shemya Island in the Aleutians and is used to track satellites in polar orbit while they are over the northern latitudes. In addition to these phased array radars, Spacetrack has smaller radars strewn about the world.

Another type of sensor used by Spacetrack is the Baker-Nunn camera. It is the most sensitive and precise satellite tracking instrument now available. Whereas radars can reach out only about 3,000 miles into space, the Baker-Nunns can photograph light reflected from a dinner plate 25,000 miles away. They are well suited for obtaining accurate orbital parameters but are limited to identifying and tracking what is already known to be in space and can do so only during the hours of darkness in good weather when the satellite being observed is illuminated by the sun.

The significant restrictions on present sensors is that they cannot easily detect new satellites in space as deep as the 23,000-mile-high earth-synchronous orbits. That

Robert Aldridge, an aerospace engineer, worked sixteen years for Lockheed helping to design Polaris missiles and MIRVs for the submarine-launched Poseidon missile. He is now doing research, writing and lecturing to inform the American people about the first-strike trends in weaponry. His articles on this danger have appeared in The Nation, Bulletin of the Atomic Scientists *and other publications.*

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is where U.S. communications and early warning spacecraft are now deployed and the Soviets are now becoming proficient at putting spacecraft that high. To overcome the limitations of existing sensors the Air Force has a near-term improvement called Ground-based Electro-Optical Deep Space Surveillance (GEODSS) which will scan like a radar with the sensitivity and range of a Baker-Nunn. GEODSS, as it is now being deployed, will still be limited to certain hours of darkness in good weather, but eventually it will be equipped with mosaic infrared sensors having integral data processing, to take some of the load off the central computer.

Mosaic infrared sensors are products of the same technology that gave us digital watches and pocket calculators. It extends that silicon application to computer chips with as many as 100,000 detectors per square inch of surface area. The resulting sensor, with millions of detector cells, is then packaged into the focal plane of an infrared telescope equipped with filters to cancel out background radiation of a wavelength different from that of the target. Each individual detector stares with concentration at a given point, to provide extreme sensitivity, but all of them together, electronically scanned in milliseconds, produce a wide picture to pick up far-distant targets. By raising the altitude of satellite detection to 23,000 miles, this system will automatically discover any new object not filed in the star field catalogue and will instantaneously calculate its orbital parameters. The first test of the complete system will take place on Maui, Hawaii in 1979. Five GEODSS stations will be placed at equal intervals around the globe near the equator.

In time, the Spacetrack Enhancement Program will move the mosaic infrared sensors into space; initial prototype funding for this project has been requested. The Air Force plans a pioneer test in 1980, with deployment on earth-synchronous satellites scheduled for the mid-1980s. The timetable is about the same as that for other first-strike technologies.

Tracking all objects in orbit and providing targeting information for hostile satellites presupposes a capability to destroy those vehicles. There has been speculation that a full-scale satellite battle would be the initial engagement of World War III. That is quite possible when one considers the increasing military role being played by spacecraft. As early as 1959 DARPA awarded contracts to study maneuverable anti-satellite space vehicles. By 1960 the United States was well on its way to using space for military purposes: the Discoverer series of satellites was developing sensors for surveillance; SAMOS (reconnaissance), Transit (navigation), and MIDAS (early warning) satellies were in advanced development. When Gary Powers's U-2 spy plane was shot down over Russia in 1960, the era of reconnaissance by aircraft came to an end, and the development of SAMOS was accelerated.

Also in 1960, the Air Force predicted that the Russians would have a satellite interceptor ready in time to start shooting down the first MIDAS early warning satellite when it became operational in 1963. (For psychological effect, the U.S. anti-satellite vehicle was named SAINT for *SA*tellite *INT*erceptor, while the alleged Soviet counterpart was called a killer satellite.)

Four half-scale models of the SAINT vehicle were reported under construction in 1961, with test intercepts planned for 1962. Then in February 1962 the Pentagon blacked out news of military satellites and that curtain has been down ever since. Although SAINT was apparently abandoned as too expensive and because a more viable approach was foreseen, orbital intercept studies were transferred to the Manned Orbital Laboratory, another Air Force program. President Kennedy later halted MOL on the ground that America's space programs were acquiring a too strongly military flavor, but it is alleged that the earth orbit rendezvous of the Apollo Space Program were related to SAINT studies.

A more direct way to kill a hostile satellite is to fire a missile at it from below. A U.S. direct-ascent satellite intercept study was reported in progress as early as 1959. During 1961-62 several contracts were awarded to study nonnuclear kill techniques which included blinding a satellite with a maser beam (Project Blackeye), blinding with paint spewed over the optical windows, and deploying a cloud of metal pellets to collide with the satellite. In 1962 the Air Force began investigating a target-homing guidance concept for satellite interceptors which eventually led to what is known as the Homing Interceptor Technology, or HIT. The Army proposed giving its Nike-Zeus ABMs the ability to knock down satellites and conducted tests to that end in 1963. A Navy program which used a modified Polaris missile and was called Early Spring, like a perfume, reached the development stage in 1964. It was designed to place a screen of metal pellets in a satellite's path. Harold Brown, director of Defense Research and Engineering at that time, alluded to these satellite intercept programs.

It is believed that the Nike-Zeus system located on Kwajalein Atoll was inactive by 1968. However, Air Force Thor missiles, armed with nuclear warheads, were maintained on five-minute anti-satellite alert on Johnston Island in the Pacific until 1975. They are now believed to be maintained in a status such that they can be reactivated within six months. But by 1969 the Air Force was exploring a direct-ascent anti-satellite device that dispensed numerous 5-pound powered projectiles into the path of an oncoming satellite. Each projectile was a HIT warhead with a small rocket motor to correct course and an infrared seeker to zero in on the target.

A miniature space interceptor again emerged in 1975 as part of the Air Force's four-year effort to develop anti-satellite technology. This new HIT warhead would also seek its target with an infrared sensor and would, like a Roman gladiator, deploy a large metallic net to tangle with the satellite. Then last November the Air Force approved a $58.7-million contract with Vought Corporation (the same company contracted by the Army to develop a HIT warhead for anti-ballistic missile defense) for a ground-launched, direct-ascent anti-satellite system which would have a warhead about the size of a gallon can and would destroy its target with collision energy. Flight tests of this weapon are scheduled for 1980, with full deployment to begin by 1982.

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Macabre as all this sounds, there is still a more sinister weapon in the offing. In his early 1977 statement as director of DARPA, Dr. George Heilmeier said: "Ponder the consequences of a space associated system that could protect our own satellite resources while possessing the capability to destroy enemy satellites in a surgical and timely manner." He was referring to the killer laser which became practical with the discovery of the flowing gas laser in 1968. By 1970 the options had widened to include electrical discharge and chemical lasers. A demonstration at China Lake, Calif. in 1975 proved that high energy (killer) lasers could cause structural damage to aircraft and that led to a rigorous Defense Department timetable to decide on high-energy lasers as a weapon by 1978. DARPA accelerated its program to focus on pulsing chemical lasers with precise pointing and tracking schemes for spacecraft use. A preliminary study showed that the United States could put a hydrogen fluoride chemical laser in space by 1982. By 1980 the Defense Department will have spent at least $750 million on killer laser research. In space, as Dr. Heilmeier pointed out, the unique properties of a laser can be fully exploited—its ability to concentrate vast amounts of energy precisely at extreme distances with the speed of light. Last November President Carter confirmed that the United States is developing laser beams that can destroy satellites.

But despite this bustling U.S. activity, the press still haunts us with accounts of Russian killer spacecraft that can track down and destroy U.S. orbiting vehicles. A closer look at Soviet programs reveals that they are being wildly inflated to justify a Pentagon "reaction." Contrary to the Air Force's earlier prediction that the USSR would have an anti-satellite system by 1963, the Soviets didn't even start testing until 1968, the year when they began their first series of co-orbital intercept attempts that ended in December 1971. It involved seven tests with various degrees of success.

The Soviet co-orbital intercept approach consists of putting a target satellite in orbit and, a few days later, launching an interceptor. The interceptor either matches the target's orbit or achieves a highly elliptical orbit with a quick bypass of the target. More recent tests have the killer popping up from a lower orbit into the target spacecraft's orbit. The only method of destruction so far demonstrated has been with conventional explosives and then only the interceptor has been destroyed. The intercept attempts have taken place only a few hundred miles high and the orbital parameters of the tests match those of Chinese satellites much closer than they do those of U.S. space vehicles. There has been no testing in the high orbits of earth-synchronous satellites.

The second series of Soviet tests began in February 1976 and is still in progress. The individual tests of this series are as follows:

Date	*Comments*
February 16, 1976	Came within 96 miles of target on fifth orbit.
April 13, 1976	Re-entered atmosphere and burned up after first orbit.
July 21, 1976	Failed to achieve intercept altitude.
December 27, 1976	Interceptor passed within a mile of target.
May 23, 1977	Failed to achieve intercept altitude.
June 16, 1977	Did not come close enough to damage target with conventional explosives.
October 26, 1977	Came within lethal range of target.
December 21, 1977	Intercepted target.

The success rate is not impressive, and even had they all been successful, the number of tests comes nowhere close to what is required to develop a system. Nevertheless, this represents the "limited capability" that "worries" Secretary Brown.

Another incident that received widespread media coverage was the alleged attempt by the Soviets to blind U.S. satellites with a ground-based laser. On October 18, 1975 the infrared sensors on the U.S. early warning satellite over the Indian Ocean were reported to have been temporarily blinded. At the same time, the infrared horizon sensors on two Air Force communications satellites were also blinded and those vehicles began to tumble. Again on November 17 and 18 the same thing happened to two more Air Force satellites. The energy source that caused the problems was reported to have been at least ten times the intensity of an ICBM launch. These incidents became headlines in almost every American newspaper and the cause was attributed to a Russian laser. Articles on that theme kept popping up for more than a year. Nevertheless, within a couple of months of the first incident the Pentagon told Congress that the disturbance was caused by several large fires along Soviet natural gas pipelines which were local in nature and did not reduce the satellite's ability to provide early warning.

In summary, the American public is being deceived into believing that the Russians are rapidly achieving the capability to destroy U.S. spacecraft whereas, in reality, they have attempted only fifteen orbit rendezvous and those with only modest success. Meanwhile, the Pentagon had actually deployed anti-satellite systems back in the 1960s and for almost two decades has been ambitiously perfecting the more effective direct-ascent interceptors with homing warheads which it plans to make operational by 1982. At the same time, killer lasers will be positioned in space to become operational during the 1980s. Again it is the Pentagon that is spending money, appropriated under the pressure of false alarms, in order to elbow ahead with another aggressive weapon which fits well into its first-strike strategy. With their early warning satellites destroyed, the Soviets would be able to launch fewer of their strategic missiles before they are destroyed. If they lost their communications satellites, the command to launch their silo- and submarine-based weapons would be complicated. And loss of their navigation spacecraft would cause some of the surviving Russian missiles to miss their targets when they are launched in retaliation. As White House press secretary, Jody Powell, correctly announced, the development of satellite killers will increase the chance of a first strike in space. □

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POLITICS of the POSSIBLE

Anthony Lewis

BOSTON, Nov. 13 . . . S. 1437 takes all the criminal laws passed by Congress since 1789—thousands of scattered, often obscure, sometimes anachronistic statutes—and replaces them with a single code. Its aim is not just neatness but consistency and clarity of purpose. Its hope is that simpler federal criminal laws will also be fairer and more effective.

Since law in any society reflects social attitudes and ideologies, such a monumental new code could hardly be drafted by neutral experts without political controversy. In fact, the project has been so controversial that for a long time it appeared doomed. The Nixon administration made the proposed new code a vehicle for repressive ideas on censorship, capital punishment and other matters. Liberal opposition killed that version, S.1.

But early this month the Senate Judiciary Committee approved S. 1437 by a vote of 12 to 2. Given the earlier history, and a committee divided sharply between Right and Left, that vote was astonishing. It resulted in large part from the efforts of one liberal Senator, Edward Kennedy of Massachusetts. The story tells a lot about political tactics.

Senator Kennedy knew that the criminal code project meant a great deal to a leading conservative on the Judiciary Committee, Senator McClellan of Arkansas. He told Senator McClellan last year that he might be able to overcome liberal opposition and pass the code if all the repressive changes in existing law were dropped and some liberalizing reforms added. Senator McClellan made the bargain.

In recent months Senator McClellan has been away sick. But his conservative colleagues on the committee have carried out the bargain, accepting many changes proposed by Senator Kennedy and by such critics of S.1 as the American Civil Liberties Union. The result, as finally voted out by the committee, is legislation of very different character from S.1.

¶ The bill flatly repeals a number of statutes long criticized as infringements of the First Amendment. One is the Smith Act of 1940, making it a crime to advocate the violent overthrow of the government—the law under which Eugene Dennis and other Communists were sent to prison in the 1950s. Another is the Logan Act of 1798, which prohibits citizens from talking to foreign governments with the intent to influence foreign policy.

¶ In prosecuting Daniel Ellsberg for giving copies of the Pentagon Papers to the press, the Nixon administration charged that he had misused government property—the ideas in the Papers. (The case was dismissed without a ruling on that theory.) S. 1437 as amended bars prosecution under the property provision if the defendant acted "primarily for the purpose of disseminating" information to the public.

¶ The press would get an important new protection against "gag orders" in S. 1437: the right to disobey, without fear of contempt, a court order that is eventually found invalid and that was "a prior restraint on the collection or dissemination of news."

Dialogue on the R

Editor

It is not often that the so-called liberal community agrees on anything. Two years ago, however, a liberal consensus developed around the unacceptability of the repressive S.1 bill, that had been proposed to revise the criminal code, and it was defeated. Now its improved successor, S. 1437, the Federal Criminal Code Reform Act of 1978, has emerged with the active support of Sen. Edward Kennedy (D., Mass.), and the even more active opposition of a number of libertarian groups, foremost among them the National Committee Against Repressive Legislation.

Recently, Thomas I. Emerson, Lines Professor of Law Emeritus of Yale University, who has testified against the new bill, and Anthony Lewis, columnist for *The New York Times*, exchanged letters which eloquently help to define the issues that anyone who

¶ The bill tightens the requirements of proof in conspiracy prosecutions and narrows a much-criticized law against making false statements to a federal officer. It reduces the penalties for possessing small amounts of marijuana. It provides new safeguards for the process of committing someone to a mental institution.

The big innovation in S. 1437 is a system of sentencing designed to reduce the present huge disparities in what different judges impose for the same crimes. It would also move toward fixed sentences, without parole. Many liberals now accept that idea because of growing awareness that uncertainty of release makes life harder for prisoners, but there is still concern about the transition to a new, fixed system.

Senator Kennedy naturally does not like everything in S. 1437. He would doubtlessly prefer, for example, to

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THE EMERSO

Dear Mr. Lewis:

I differ sharply from you on . . . S. 1437. My conclusion is that it still contains far too many objectionable provisions for liberal citizens to accept.

For example, I think you are wrong in saying that S. 1437 eliminates the danger of the government imposing an official secrets act on the country. S. 1437 does limit the offenses of theft, trafficking in stolen property and receiving stolen property (Secs. 1731-1733) to exempt the obtaining or using of information primarily for dissemination to the public. But it leaves in effect the present espionage provisions which the government, in the Ellsberg *case and elsewhere, has consistently interpreted as constituting an official secrets act. Likewise, it is true that the press is given a break in the case of invalid "gag orders," but that protection does not extend to other vital areas, such as an injunction against holding a demonstration or a labor injunction.*

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cares about criminal justice and civil liberties ought to address. We reprint that correspondence here, along with the Lewis column that stimulated the exchange, excerpts from the Emerson testimony which elaborates on it, and passages from Edward Kennedy's remarks to the Senate on behalf of S. 1437. On one level these various documents constitute a classic confrontation between the reformer and the radical, but on another they make vivid a serious difference in judgment over how to guarantee our liberties while improving our order.

The Lewis-Emerson exchange, with its supporting material, is designed to open rather than close the debate. We invite our readers to take up where it leaves off, and we have reserved space in future issues to print further contributions to the dialogue.

tighten existing wiretapping laws instead of leaving them as they are. But he has stuck to the bargain with Senator McClellan, even though that has brought him into conflict with some of his usual liberal supporters.

In effect, Senator Kennedy has come down on the side of the possible in the tactical choice presented again and again in the politics of a democracy: to accept the possible or fight for the perfect. He evidently thinks that some reform of the criminal law is better than none, especially at a time when the country is hardly in a reformist mood. Beyond that, he thinks "crime" as a political issue is a sure loser for liberals—who can only gain if agreement on a new federal code mutes the issue. . . .

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LEWIS LETTERS

Again, I do not think the requirements of proof in conspiracy cases are "tightened" to any significant extent. The difference between the present requirement of an overt act and the requirement that a person "engages in any conduct with intent to effect any objective of the agreement" is hardly noticeable. And I doubt any lawyer would say that present law makes it a criminal offense to make a false statement to an FBI agent who comes to your door, which Section 1343 of S. 1437 does.

I also call your attention to the dangers of the new crime of criminal solicitation (Sec. 1003), provisions regarding obstructing a government function by fraud or by physical interference, the making it a crime to "resist" a judicial order (as well as to disobey one) (Secs. 1331 and 1335), the new crime of failing to obey a public safety order (Sec. 1861), the elimination of the exemption for labor union activities from the Hobbs Act (Secs.

(Continued on page 338)

...ed Criminal Code ... SENATOR KENNEDY

Introduction. S. 1437, the Federal Criminal Code Reform Act of 1978, would modernize and streamline the entire federal criminal law. This has never been done in the over 200 years of our nation. Instead we have some 3,000 laws without plan or structure, virtually a Tower of Babel, and it is of critical importance to our people that this reform effort succeed.

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S. 1437 was drafted with one overriding thought in mind—to avoid the controversies of the past, to bypass the pitfalls which have doomed previous code reform efforts. Controversial and provocative amendments were laid aside, to be dealt with separately on another day. This has been the key to the consensus which has highlighted the Senate's deliberations up to now—the recognized need for all sides to negotiate and compromise in order to achieve a final product worthy of passage. . . .

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I am, of course, aware that certain critics continue to voice concern over certain sections of S. 1437. I understand and appreciate such concern. But I am convinced that the great majority of the sections in S. 1437 which continue to trouble civil libertarians are actually an improvement over existing law! While I am not satisfied with all the provisions of the code, and while I still hope that there will be some improvements, I am convinced that the proposed code contains important improvements over existing law, that S. 1437 reflects a net gain for civil liberties, and that the bill does not contain any new provisions that can truly be called repressive. Critics of S. 1437 should be directing their criticism at current law.

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Press Protections. Specific defenses are recognized for the violation of court "gag" orders that unconstitutionally restrain the gathering or publishing of news; defenses added to Section 1301 of S. 1437 prevent the government from initiating another "Pentagon Papers" case. . . .

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Wiretapping. The statute permitting wiretapping in emergency situations without a prior court order (which today is vaguely worded as applicable to offenses involving national security or organized crime) is limited specifically to offenses involving treason, sabotage or espionage, and to offenses involving the risk of death. The provision of current law stating that nothing contained in the wiretapping provisions shall be construed to limit the constitutional power of the President is eliminated because of the controversy it provoked and because it is without any legal effect.

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False Statements. Section 1343 punishes the making of material false statements to a law-enforcement officer. Here we have a striking example of significant improvement over existing law. Existing law (18 U.S.C. 1001) is extraordinarily broad, requiring virtually no warnings or safeguards. The proposed provision, as amended, would require that *Miranda*-type warnings must be given; the defendant must know that he is speaking to a law-enforcement or investigative officer, and there is an opportunity to react. Whatever potential dangers remain

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in this law are simply an outgrowth of existing law.

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Public Demonstrations. The riot offenses of existing law (18 U.S.C. 2101) are substantially narrowed by the code, both in terms of the definition of the substantive offenses and in terms of the federal ability to prosecute. The Rap Brown jurisdictional base is repealed; an incitement to riot may not be prosecuted unless a riot actually occurs. A riot is defined to require at least ten participants, instead of three participants as in current law; no conspiracy may be charged unless the riot actually occurs.

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Sentencing. The bill sets forth four generally recognized purposes of sentencing—deterrence, protection of the public, assurance of just punishment, and rehabilitation. . . .

In sentencing offenders, a judge will be expected to sentence within the range specified in the guidelines. . . . If an offender is sentenced below the range specified in the guidelines, the government may obtain appellate review of the sentence. If an offender is sentenced above the range specified in the guidelines, the offender may appeal. This system is designed to promote greater uniformity and fairness, while retaining necessary judicial flexibility. Under this new approach, the gross disparities in sentencing found in current law should be significantly reduced.

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Parole. The only parole circumstance I can foresee is, perhaps, that of a person who may be receiving some kind of therapy or treatment, for example, to overcome drug addiction.

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Conclusion. S. 1437 is not completely satisfactory in every respect. For example, the provisions with respect to wiretapping and espionage could be improved vastly; but after twelve years, agreements have at last been reached.

The key point, I believe, for the civil libertarians is this: the remaining areas of concern are important and they need addressing. I certainly am committed and will work as I have tried in the past to meet those challenges and those responsibilities.

But the provisions of S. 1437, although still troublesome, are no worse than existing law and are usually better! For example, in the wiretapping, false statements, and riot provisions, we basically have a net gain for civil liberties.

Excerpts from the remarks of Sen. Edward Kennedy on behalf of S. 1437; the Congressional Record, *January 19, 1978.*

1722 and 1723), and many others. It seems to me that S. 1437 is still based on the "government as fortress" mentality of the drafters of S.1. It is the citizen who wants to participate in public events, not the government, that needs greater protection and encouragement.

Finally, though I am not much of an expert here, I think the penalty, sentencing, probation and parole provisions—a main concern of the Brown commission—are now hopelessly retrogressive. The ACLU estimates that they will increase the federal prison population by a third or more.

I hope you will look into these matters and perhaps reconsider your position. With best regards,

Thomas I. Emerson

Dear Professor Emerson:

We continue to disagree about S. 1437. Let me indicate in a sketchy way why I am not convinced by your objections.

Your first point relates to "official secrets." But as you say, accurately, all this bill does is "leave in effect the present espionage provisions. . . ." You concede also that it does limit certain related offenses. I very much agree with you in disliking present law in the area. But the question comes down to whether we should wait for some millennium when it can be changed to our liking, or accept for now some definite improvements (one of which would have knocked out a count in the Ellsberg-Russo prosecution) and no retrogression. *For me that is an easy question, because I see no prospect that our views on the espionage laws are about to triumph.*

In the last sentence [of your third paragraph] you say that present law does not make false statements to an FBI agent a crime. To the contrary, the present 18 U.S.C. 1001 punishes as a felon anyone who "makes any false, fictitious or fraudulent statements or representations" in any matter "within the jurisdiction of any department or agency. . . ." There are other, scattered provisions to the same effect—amazingly sweeping, criticized (by such judges as Gesell) but very much the law. S. 1437 narrows the scope considerably, though not quite so much as I would like.

The new crime of criminal solicitation, as you put it, does not seem objectionable to me. Would you argue that a federal criminal code should not punish someone who asks another specifically to carry out a kidnapping? Such a provision is common, perhaps universal, in state law—and this version is narrower than most.

Nor do I see why a desire to include union leaders in the scope of a statute against racketeering—a desire that I certainly share—should be said to reflect a "government as fortress" mentality. Jimmy Hoffa was not my idea of a liberal hero; nor are his successors. The notion that people should be exempt *from a racketeering statute solely because they hold union office seems to me unacceptable. That is a substantive issue, and I know there is another side, but I honestly do not think it bears on the notion that S. 1437 is "repressive" legislation.*

Well, I could go on. But I think my main answer is to say that this legislation is still very much in a state where it can and should be improved. I feel strongly that the way to improve it is to address particular issues, in the very way that you address some in your letter to me, and not to condemn the whole attempt as a kind of conspiracy. I would guess that the House Judiciary Committee will be receptive to such specific advice, and I hope you will testify and consult with them on ways to improve the code. Sincerely,

Anthony Lewis

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TESTIMONY OF THOMAS I. EMERSON

Introduction. The infringements upon our system of individual rights which are embodied in S.1437 arise from several sources. First of all, . . . the Nixon administration used the opportunity afforded by the proposed revision of the federal criminal laws to expand and shape the bill in ways that would enable the government to crush all political opposition and insulate itself from criticism or influence by the citizens of the country. It is now generally conceded, even by many who supported the bill at the time, that S.1 was an atrocity. Some of the oppressive features of S.1, mainly those which affected the press, have been removed, and others have been toned down. But much of the Nixon philosophy still permeates the bill and many provisions that would curtail the rights of citizens to oppose the policies of their government still remain. . . . In short, many of the provisions of S.1437 are simply too broad, and their repressive impact upon political and civil rights has been ignored.

In this connection it has frequently been claimed that the critics of S.1437 are giving a strained or improbable interpretation to many of its provisions, or that the requirements for proof of a certain intent offer adequate protection. It is thus asserted that the dangers envisioned will never in practice occur. In dealing with legislation that affects the liberties of the citizen, however, we cannot assume that the laws will always be administered by a benevolent prosecutor, a kindly jury, or a benign judge. Rather we must anticipate, especially for unpopular groups or in times of stress, tough prosecutors, hostile juries, and judges ready to throw the book at the defendant. It is wholly proper, therefore, to approach the various provisions of S.1437 with a wary and sensitive eye.

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Complicity Crimes. Section 401 (Liability of an Accomplice) establishes a general offense of complicity. This makes a person "criminally liable for an offense based upon the conduct of another person" if "he knowingly aids or abets the commission of the offense by the other person." The term "abet" is defined by Section 111 to include, not only "procure" or "command" but "induce"; and the term "aid" includes "facilitate." Thus a person who urges another person not to tell the whole truth when an FBI agent calls at the door (a federal crime under Section 1343) would be guilty of a crime. So would a person who urged a young man to avoid the draft by emigrating to Canada (a federal crime under Section 1114). The provision should be narrowed to avoid infringement on freedom of speech. . . .

Most dangerous of all is Section 1003 (Criminal Solicitation). This section creates a new federal crime, the crime of "criminal solicitation": "A person is guilty of an offense if, with intent that another person engage in conduct constituting a crime, and, in fact, under circumstances strongly corroborative of that intent, he commands, entreats, induces, or otherwise endeavors to persuade such other person to engage in such conduct." . . . The signing of a document, such as the "Call to Resist Illegitimate Authority" endorsed by 300 leading citizens as an expression of opposition to the Vietnam War, could be prosecuted as a solicitation to violate Section 1114 (Evading Military Service).

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Official Secrets. Sections 1121-1124 (Espionage, National Defense Information, and Classified Information) deal with espionage and the dissemination of national defense and classified information. S.1437 has dropped the provision of S.1, which would have expressly established an official secrets act, that is, would have made the publication or dissemination of any classified or national defense information by anyone at any time a criminal offense. . . .

It has been assumed by the press and other interested persons that this change from S.1 has eliminated the danger of an official secrets act. But this definitely is not the case. The government has consistently claimed, in the *Ellsberg* case and elsewhere, that the present statutes should be interpreted as imposing an official secrets act. In fact the Department of Justice took the position that the provisions included in S.1 did not change the existing law. . . .

It is clear that the government and the draftsmen of S.1437 interpret existing laws as making it a criminal offense for a government employee to disclose and a newspaper or any person to publish national defense or classified information, and that no intent to aid a foreign power need be shown. On this basis *The New York Times*, *The Washington Post* and other newspapers could be prosecuted for publishing the Pentagon Papers.

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Press Confidentiality. Section 1311 (Hindering Law Enforcement) is phrased in such sweeping terms that it could readily be used to abridge freedom of the press. It provides, *inter alia*, that a person is guilty of an offense if he "interferes with, hinders, delays or prevents the discovery, apprehension" or conviction of a person charged with crime, by "engaging in conduct by which he knowingly conceals the other person or his identity." The word "conduct" is defined in Section 111 as including "any act, any omission, and any possession." Thus a newspaper reporter who refuses to disclose his notes to government authorities, or destroys them, in order to keep a pledge of confidence, could be prosecuted for hindering law enforcement.

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Eavesdropping. Section 1521 makes it an offense to intercept "a private oral communication by means of an eavesdropping device without the prior consent of a party to the communication." The provision contains a major loophole. It permits wiretapping, bugging and recording of private communications so long as any one party consents; all other parties may be ignorant of what is taking place. Such permission to intercept private communications, certainly in this blanket fashion, cannot be justified. . . .

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Labor Unions. Section 1722 (Extortion) and Section 1723 (Blackmail) are of paramount interest because of their impact upon labor. Section 1722 provides that a person is guilty of an offense "If he obtains property of another . . . by threatening or placing another person in

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fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged." Section 1723 defines blackmail as including, among other things, obtaining the property of another "by threatening or placing another person in fear that any person will . . . improperly subject any person to economic loss or injury to his business or profession." Obviously these provisions on their face can be applied to a broad range of labor union activities. Any strike involving violence would clearly violate both sections. Moreover, quite apart from violence, labor unions seeking higher wages or more favorable working conditions frequently "threaten" an employer or "place him in fear" that his "property will be damaged" by a strike. In fact these are the very purposes of a strike. . . . Hence labor unions are placed in a very vulnerable position by S.1437, far worse than at the present time when activity occurring in the course of a legitimate labor dispute has been held not to be covered by the analogous provisions of the Hobbs Act. . . .

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Public Demonstrations. Another unprecedented exercise of federal power is found in Section 1861 (Failing to Obey a Public Safety Order), which creates a new federal offense. This section provides that it is unlawful for any person to disobey an order of a law-enforcement officer or a public servant assigned public safety responsibilities "to move, disperse, or refrain from specified activity in a particular place," where the order is issued in response to a fire, flood, riot, "or other condition that creates a risk of serious injury to a person or serious damage to property" and is, in fact, "lawful and reasonably designed" to accomplish the end. As originally drafted the provision would put in the hands of every federal law-enforcement official the authority to disperse a gathering, to forbid picketing or parading, or to require citizens to refrain from leafleting or canvassing, whenever in his judgment there is a risk of injury to person or property.

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Wiretapping. The wiretap and bugging provisions of S.1437 (Secs. 3101-3108) make some improvements in the present law as set forth in the Omnibus Crime Control and Safe Streets Act of 1968. They reduce the number of crimes in the investigation of which electronic surveillance may be employed, and remove the provision disclaiming intention to interfere with any "inherent" power the President may have to use electronic surveillance without regard to constitutional or statutory limitations. But S.1437 otherwise leaves the authority to wiretap and bug intact or in some ways expands it. Experience since 1968 has shown that these powers are of little use in law enforcement and, since they infringe so patently upon the rights of privacy, they should be abandoned altogether.

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Bail. Section 3503 was amended in the Senate to provide that a judge may refuse release (by bail or otherwise) to any person charged, not only with an offense involving the death penalty but also with a series of other offenses, including murder, rape, kidnapping, armed robbery and some drug offenses, unless the judge "has reason to believe" that such person "will not pose a danger to any other person or to the community." It has traditionally been the law in this country that a person charged with crime, other than a capital offense, is entitled to release pending trial under the minimal conditions reasonably required to assure his presence at trial, and that no other grounds for refusing release are permissible. This fundamental right is founded upon the presumption of innocence and the constitutional mandate of the Eighth Amendment that "excessive bail shall not be required." The preventive detention provisions now incorporated in Section 3503 flagrantly violate these traditional and constitutional rights. . . . The proper way to protect the public is not to take away the rights of the individual but to bring him promptly to trial.

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Parole. The virtual abolition of what is now known as parole (called "early release" in the bill), the drastic reduction of time off for good behavior (roughly from ten to three days a month), the provision for appellate review of sentences more lenient than the guidelines suggest, and the mandatory prison sentences established in two important areas (trafficking in opiates (Sec. 1811) and using a weapon in the course of a crime (Sec. 1823)), all press toward longer periods of incarceration. Such a development would be disastrous. No bill should be passed until Congress can be assured that this will not be the outcome.

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Sentencing. The problem of uniformity in sentences—one of the major objectives of S.1437—is not really solved and it is by no means clear that the bill will achieve the desired result. A major portion of this task is delegated to the Sentencing Commission. The commission is directed to establish guidelines for determining whether a convicted person should receive imprisonment, a fine or probation; the length of sentence or probation or the amount of fine; the appropriateness and length of parole; and similar matters involved in the sentencing process. These guidelines become effective without further action by Congress. . . . Congress should establish a far more specific framework under which the commission is to operate.

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Conclusion. Reform of the federal criminal code is a worthwhile project. That reform is not, however, inconsistent with maintaining our system of individual rights. On the contrary, one cannot be done successfully without the other. S.1 was designed to impose a Watergate-type straitjacket upon the people of this country. S.1437 retains too many of those provisions to be acceptable. They are still framed with an eye toward affording the government apparatus meticulous protection against every possible form of inconvenience, while forgetting the needs of a healthy and dynamic citizenry. There is no reason why codification of the federal criminal law cannot be accomplished in a manner that strengthens, rather than undermines, democratic institutions in America. . . .

The above testimony was presented by Thomas I. Emerson on March 6, 1978 before the Criminal Justice Subcommittee of the House of Representatives Committee on the Judiciary on S.1437, the Criminal Code Reform Act of 1978.

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BOOKS & THE ARTS

The Moral Argument as Apologia

JUST AND UNJUST WARS: A Moral Argument with Historical Illustrations. *By Michael Walzer. Basic Books. 384 pp. $15.*

RICHARD FALK

Throughout the course of the war in Vietnam the anti-war movement attacked the official moral and legal justifications for the American role. This attack helped erode the consensus of opinion that supported the war in its early years, although no one but a legalist would claim that shifting perceptions of legitimacy played more than a minor role in bringing the war to an end. The main factor was, of course, what happened on the battlefields of Vietnam and, in that respect, the Tet offensive, mounted ten years ago, was pivotal. Granting that the play of forces is decisive, it still remains an exacting and fundamental intellectual challenge to inquire into the legitimacy of that play under the distinctive conditions of modern warfare.

Michael Walzer seems marvelously well equipped, by training and endowment, to conduct such an inquiry. Unfortunately, the results are exasperating. The technical virtuosity and conceptual subtlety that we expect from Walzer are well deployed. At the same time, the argument is so seriously flawed morally and politically as to cast real doubt on the value of the enterprise. Instead of a text for thought and action, we receive in the end a manual of elegant evasion.

Without doubt Walzer has produced a brilliantly reasoned book about the relevance of moral argument to modern war. Walzer conceives of his task as follows: "I want to account for the ways in which men and women who are not lawyers but simply citizens (and sometimes soldiers) argue about war, and to expound the terms we commonly use." He largely succeeds in providing a coherent and comprehensive framework for moral inquiry, blending the concrete assessment of particular situations of warfare with the formulation of generalized principles. As a consequence, Walzer manages to avoid both the abstractness of standard normative treatments and the narrowness of descriptive accounts of particular wars or combat situations. As such, Walzer has written one of the most significant modern restatements of just war thinking. It should be studied by anyone interested in stemming the Machiavellian/Kissingerian tide of the times, and yet it is also troubling on precisely these grounds. Walzer writes with the apparent conviction that justice is attainable in the setting of modern war without requiring any reformulation of notions of patriotism and citizenship. Indeed, Walzer makes the claim that despite all we now know about statecraft and the technology of warfare, it remains generally possible for political leaders to reconcile the pursuit of national interests with the claims of international law and morality. Walzer believes, in effect, that it remains practical, as well as proper, to act justly in wartime (*most of the time*).

Of course, the width of the exception between the parenthesis is one catch—almost, but not quite, a catch-22. Walzer endorses the view that a condition of "supreme emergency" can override the normal dictates of justice. Thus, he argues, indiscriminate bombing of German cities in World War II was an acceptable tactic until 1942, so long as the outcome of the war was in doubt. It is not permissible to suspend normal restraints merely to achieve a military victory but it was permissible in view of the dire consequences of a Nazi victory: "Nazism was an ultimate threat to everything decent in our lives," an outcome that would have created an imminent threat of enslavement and extermination for non-German societies.

Walzer believes, however, that the use of atomic bombs against Hiroshima and Nagasaki to achieve Japanese unconditional surrender at minimum loss of life cannot be justified by the claim of "supreme emergency." In that setting, the outcome of the war was not in doubt, only the terms of Japanese surrender. And so Walzer argues ". . . the victorious Americans owed the Japanese people an experiment in negotiation. To use the atomic bomb . . . without even attempting such an experiment, was a double crime."

Although not fully convincing in the German instance, the distinction that Walzer draws in the World War II context effectively illustrates his conception of "supreme emergency." It is, however, Walzer's extension of "supreme emergency" theorizing to the persisting claims of nuclear deterrence that I find deeply disturbing. Walzer acknowledges, as he must given the moral frame of his argument, that the nuclear threat to inflict indiscriminate mass devastation on civilian populations is immoral. He makes the dramatic assertion that "Nuclear weapons explode the theory of just war." At the same time, Walzer believes that disarmament and nonviolence are pipe dreams, and that security depends on the willingness to fight. This leads him to postulate a permanent state of "supreme emergency" that vindicates security based on immoral nuclear threats to devastate an enemy society. Walzer concludes that "Deterrence is a way of coping with that condition, and though it is a bad way, there will be no other that is practical in a world of sovereign and suspicious states."

This position is softened only by the vague injunction "to seize opportunities to escape" from the immoral clutches of nuclear deterrence. And, in fact, Walzer invokes a kind of jurisdictional constraint to avoid any inquiry into whether such opportunities exist: "It is not my purpose here to suggest what the alternatives [to deterrence] might look like." Throughout his book, Walzer makes clear that he regards the supremacy of national communities to be the highest human aspiration in the present world system. In other words, Walzer seems shipwrecked by nuclear despair, at once giving his reluctant sanction to an immoral security system and cavalierly assigning to others the search for alternatives. Indeed, his attitude toward the search for alternative security systems seems decidedly negative. It seems evident that Walzer is no friend of the United Nations, nor of efforts to strengthen global mechanisms of accountability. He adopts a scornful, patronizing attitude toward those who assert the need for a new world

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order. In the end, despite his artful moralizing, Walzer gives implicit blessings to slide-rule strategists and Pentagon "whiz kids" who compile the annual case for an ever larger defense budget, sinking us yet deeper in the nuclear morass.

Walzer's failure to heed the radical consequences of his conclusion that nuclear weaponry "explodes the theory of just war" is deeply disappointing. He seems unable or unwilling to draw from that conclusion any practical implications for thought or action. Besides, Walzer accepts as real the claim that defense policy is guided by deterrence necessities. The full truth about military planning includes a mindless arms race, the diversion of precious resources, a permanent condition of prewar readiness, an enormous militarized bureaucracy, and a willingness to develop and deploy weapons such as the neutron bomb that accentuate the fiendish moral status of nuclear weapons in general. Walzer is silent on these issues, and thereby, in my eyes, substantially defaults on his promise to guide moral argument about war.

A similar problematic of evasion emerges from Walzer's treatment of the Vietnam experience. Walzer tells us that his book arose out of a promise he made to himself during the Vietnam period to reflect upon his anti-war activism of the 1960s. In some respects, *Just and Unjust Wars* fulfills this promise, but when it comes to the Vietnam experience itself the results are disappointing. The research into tactics is thin, incomplete, and often unconvincing, but more significantly, the assessment of responsibility for leaders and citizens is left embarrassingly indeterminate. Walzer does not conclude whether or not, by Nuremberg standards, American policy makers during the war in Vietnam were guilty of war crimes. He does assert that the Vietnam "tale of aggression and atrocity" may have reached such proportions as to create a situation of culpability, but adds, "I cannot mark out that time here; nor am I interested in pointing at particular persons or certain that I can do so. I only want to insist that there are responsible people even when, under the conditions of imperfect democracy, moral accounting is difficult and imprecise." It is instructive to compare Walzer's apparent bewilderment with the clarity of the well-supported and persuasive conclusions reached more than a decade ago at the Russell War Crimes Tribunal without even the benefit of the Pentagon Papers and other additional sources of documentation. Furthermore, to neglect the issue of assessment is tantamount to saying that the Nuremberg tradition of accountability is no longer operative. One can only suppose that Walzer's moral universe is so pragmatically shaped by the realities of state power that he regards the Nuremberg approach as trivial in the Vietnam setting because it could not be enforced.

Walzer's evasive bottom-line assessment of Vietnam also stands in stark contrast to the "clarity" with which American courts have dealt with Vietnam resisters who transgressed domestic law, and were refused even the procedural right to argue and establish "a Nuremberg defense." These prisoners of conscience, often acting from the deepest conviction and at great personal cost, are totally ignored in Walzer's celebration of moral theorizing, an incredible moral oversight on his part. The most Walzer can muster on behalf of opponents of statism is a half-hearted toleration of an exemption from military service for conscientious objectors.

And there is more. Walzer, well-known as a passionate supporter of Israel, seems unable to overcome his partisanship even in a treatise on the generalized circumstances of justice in war. He selects, reasonably enough, the Six Day War of 1967 to illustrate anticipatory self-defense (although he unconvincingly contends that the Egyptian provocation belongs in a list of the century's eight worst instances of aggression). Walzer believes that Israel was entitled to strike first because of the context of fear and provocation, and writes persuasively, if one-sidedly, on this issue. His failure, however, to couple this argument in justification with an expression of concern about Israeli use of the occasion to achieve a massive expansion of national territory is what makes his treatment suspect. It is important to understand that it is mainly Israel's refusal to withdraw from the occupied territories, even those unrelated to Israeli security, that has strengthened the perception of Israel as "aggressor" over the course of the years since 1967. Curiously, this issue is nowhere discussed, despite Walzer's general attention to nuance and despite the fact that he condemns the American move north of the 38th Parallel in the Korean War because it exceeded the mandate of self-defense to such an extent as to be metamorphized into aggression. Similarly, with the single exception of a passing criticism of an Israeli reprisal raid on a Palestinian encampment at Khibye, Walzer condemns Palestinian terror while withholding critical comments on Israeli uses of violence against civilians. Israeli policy is endorsed beneath the anodyne rubric of "peacetime reprisals," but these reprisals are presented in their most benign, least characteristic form by taking the 1968 commando raid on the Beirut airport that took no lives as prototypic.

It is, of course, all right for Walzer to polemicize to support his political preferences, but it does detract from his own lofty claims: "No one can argue about justice and war, as I have been doing, without striving for an authoritative voice and laying claim to a certain 'weightiness.'" In the end, I am afraid Walzer's weightiness is likely to have an impact only upon those members of statist establishments that seek moral sanction for their "normal" foreign policies. There is little in this book that could interest victims of oppression who

THE CHINESE INSOMNIACS

It is good to know
the Chinese insomniacs.
How, in 495 A.D.,
in 500 B.C.,
the moon shining, and the pine-
trees shining back
at it, a poet had to walk
to the window.

It is companionable
to remember my fellow
who was unable to sleep
because of a sorrow, or not;
who had to watch
for the wind
to stir night flowers in the garden
instead of taking the deep journey.

They live nine hun-
dred years apart,
and turn, and turn, restless.
She says her sleeve is wet
with tears; he says something difficult
to forget, like
music counts the heartbeat.

A date is only a mark
on paper—it has little to do
with what is long.
It is good to have their company
tonight: a lady, awake
until birdsong;
a gentleman who made
poems later out of frag-
ments of the dark.

Josephine Jacobsen

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demand "liberation" or adversaries of the state system who seek its transformation as a moral and political priority of the highest order. It is, perhaps, ironic that Walzer's true achievement is to produce an apologia, rather than a critique, of standard geopolitics. Such an apologia has a seductive aura of objectivity that arises from being embedded in a more embracing normative framework that will strike the unwary reader as being above the fray. Those who most deeply imperil the human prospect will be pleased to discover their moral vindication in Walzer's book. □

Can the Bill of Rights Get a Disaster Relief Loan?

FREEDOM VS. NATIONAL SECURITY: Secrecy and Surveillance. *By Morton H. Halperin and Daniel Hoffman. Chelsea House. 589 pp. $15.*

WILLIAM PRESTON

Like the Appalachian poor who live in the flood plains below seemingly protective dams, the American people suffer the periodic rampages of unchecked government power with a kind of illiterate, fatalistic resignation. They are regularly assaulted yet they won't move or demand a more secure structure. It is not for lack of information. Quite the opposite. The literature of exposure has been as torrential as the catastrophe itself. Experts of all kinds have diagnosed the inherent weaknesses of the constitutional dam that serves as the only shield against renewed disaster. Even more peculiar is the readily accepted assurance that the system works well, except in bad weather.

In one of the apathetic aftermaths that survivals inevitably generate ("we made it!"), the post-Watergate lull has now descended upon us. The vast majority are congratulating one another that the sun is shining again. Halperin and Hoffman, on the other hand, want us to remember that there was darkness at noon. In spite of all the odds against them, they believe they can "alert a new generation to the danger which too many of us ignored for too long." This is a poignant confession for Halperin, the victim of a four-month wiretap, to make. He now realizes " 'it can happen here,' and it will, unless we understand how precious our rights are, and how easy it is to surrender them on the altar of security."

Assuming that an alarm of some sort is obligatory for victims of high crimes and misdemeanors, does *Freedom vs. National Security* do the job? If not, then what is its particular message and usefulness? It should be clear that the authors have not chosen a provocative stance. They are not playing Luther to Nixon's Pope. Nor are they focusing on the personal case history as Richard Harris did in *Freedom Spent*. They have deliberately avoided a historical approach. Instead they have chosen to "assemble the cases and other materials that most usefully illuminate the main issues of the day as regards the clash between personal liberties and the perceived requirements of national security." Statutes and court decisions thus comprise the scholarly bulk of a legal reference work that sometimes reads like the *Federal Register*. One can peruse the Internal Security Act of 1950, for example, for 32 pages until outrage and moral indignation dissolve into nauseous torpor.

Turning a documentary collection into an incitement demands more than skillful selection and careful editing, both of which the authors exhibit to a notable degree. It requires a historical dimension, a strong sense of the nondocumentary dynamics, and a critical skepticism toward the judicial function in American politics. Although the promotional literature promises "extensive analysis . . . of the main currents in the conflict of freedom vs. security," the commentary is often abbreviated, restricted to the most recent developments in law and constitutional interpretation, and focused on the interplay within the courts. On the clash between free speech and the national security obsession, for example, the authors provide a bare page and a half of interpretation. Their opening assertion that in "invoking claims of national security, the government has from time to time sought to punish speech . . ." can hardly convey the extensive tradition of suppression that federal authority has displayed from Washington's time to the present.

Lacking connective tissue to the past, the brief interpretative commentary exudes a simplistic present-mindedness that minimizes what Leonard Levy has called "the darker side." That is why the authors can startle themselves with the proposal that "it can happen here" instead of alerting their audience to the reality that "it has happened here and more than once." They are thus overly optimistic both about the historical realities of freedom and about the long-run increases in government power that threaten liberty today.

The political philosophy suffusing the book and its emphasis on the more recent judicial trends subtly undermine the stated intention of the authors. A new generation cannot be adequately warned by those who recognize the legitimacy of balancing First and Fourth Amendment freedoms against the claims of security. Given the past performance of the courts during "crisis" interventions, there is no reason to believe in their collective backbone. They have simply not done the job in seasons of excitement when civil liberties have been most threatened, nor have they preserved "the right to differ as to things that touch the heart of the existing order."

The contemporary case emphasis will unintentionally reassure those with a limited historical perspective. Nixon's outrageous claim of inherent Executive power met the judicial scorn it deserved. Access to information has temporarily and apparently improved. *Stated* surveillance is under closer scrutiny. As anticommunism waned, certain sweeping security precautions and the irregular procedures they spawned have been partially dismantled by court order. The right to travel has expanded since the days of Dulles. The status of aliens, COs, and armed forces members has improved. J. Edgar Hoover is dead, all's right with the world.

This assumes, of course, that an accurate picture of freedom and government practices can be inferred from the fossil remains frozen in Supreme Court decisions. But just as in the area of police abuses in criminal justice, so too does the national security arena have a "vast gray area," a network of largely invisible practices that never or rarely surface. It took years for outsiders to penetrate the secrecy surrounding the federal wiretapping and electronic surveillance that had proliferated since the 1930s. And tappers that do not divulge the information may still operate unchecked. Accelerating technology has constantly kept the loopholes ahead of the law. A judiciary that has been defer-

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ential in national security matters will be even more removed from the massive uncontrollable discretion that exists from the second-rank level of government on down, behavior that even the executive branch cannot control.

The obsession with security may be less intense at the present, but it is highly unlikely that the systems of "order maintenance" it created have been abandoned. Those sanctions and practices have historically achieved a permanent place in the arsenal of repression as the Espionage Act of 1918 suggests. Nor has the appetite for enlarging government power disappeared. As Nat Hentoff has written recently about Senate Bill 1437, ominous provisions on riot, detention, conspiracy and criminal solicitation promise further assaults on fundamental freedoms in the future.

Freedom vs. National Security, therefore, is not an adequate alert. It does not really convey the circumstances in which repression has flourished, emphasize the many judicial accommodations to the mania for security, or explore the manifold alternatives that government has utilized (Congressional investigations, for one). "The legacy of our constitutional system is stronger than we dared hope when we began the inquiry," Halperin and Hoffman affirm. As a result of this view, their book will join other interpretations that have created and perpetuated the fiction that "every violation of freedom . . . is a special case, justified by extraordinary circumstances, one that will never happen again." And optimists will again take heart by insisting that the Republic has survived with the Constitution intact.

What, then, is the contribution that *Freedom vs. National Security* does make? To whom is it directed? Lawyers and law students can find much of the material in Emerson, Haber, and Dorsen's *Political and Civil Rights in the United States*, especially the chapters on national security and government secrecy. Others may wish to use Halperin and Hoffman for its enlarged coverage of the issues of inherent Presidential power and control of government information as well as for its up-to-date documentation of cases involving citizenship, travel, government employment, and the rights of special groups. There is also an excellent section on civil remedies.

If it is depressing and dismaying to read the numerous national security statutes and gag down the tortured reasoning of some of the Supreme Court opinions, it is still heartening and invigorating to find clarity and courage supporting freedom's claims. We (and our leaders) need to be continually reminded that "emergency does not create power," that the Constitution was created during a very grave emergency, and that "the purpose of the Constitution was not only to grant power but to keep it from getting out of hand." Nor should we forget when evaluating precautionary increments of security that "the tendency is strong to emphasize transient results . . . and lose sight of enduring consequences upon the balanced power structure of our Republic." Members of the court have also asserted that "the guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic" thereby echoing Patrick Henry's claim that "to cover with the veil of secrecy the common routine of business, is an abomination. . . ."

Did the founding fathers booby-trap the Bill of Rights by the dangerous generalities that lay scattered through the instrument of government? Claims to the "inherent," "implied," "plenary," "war," and "emergency" powers of the Presidency have sanctioned arrogant and irresponsible Executive behavior throughout American history. So much so that, as Justice Black once said, "the executive branch seems to have forgotten the essential purpose and history of the First Amendment." And when challenged by the Supreme Court, Presidents have often identified with the outspoken contempt Andrew Jackson represented when he dared John Marshall to try to enforce the law he had just upheld.

Given the false dichotomy that casts the amendments on the side of private interests and security on the side of the public interest, the balancing act is already loaded. Once the government had declared that "grave and irreparable injury" may be inflicted on the public interest, all kinds of restrictions on freedom may then have to be "tolerated." Should a new time of foreign or domestic crisis develop in the years to come, which pattern of Executive conduct will result: libertarian or repressive? I suspect most people believe that the latter scenario would again be invoked in the name of security. It need not be. During the War of 1812 with enemy troops on American soil, the White House in flames, and internal subversion (in New England) widespread to the point of secession, James Madison kept his constitutional cool and the Bill of Rights intact. But we are closer today to the obsessive security preoccupations of Madison's more irresolute successors than to his own steadfast commitments to liberty. □

Vietnam, We've All Been There

GOING AFTER CACCIATO. *By Tim O'Brien. Delacorte Press. 388 pp. $8.95.*

DISPATCHES. *By Michael Herr. Alfred A. Knopf. 260 pp. $8.95.*

ELIZABETH POCHODA

Anti-war sentiment is by now as much the routine business of combat novels or memoirs as keeping the sides straight and the slang accurate. It is not, however, always as convincing. Tim O'Brien's Vietnam novel, *Going After Cacciato*, borrows, for reasons not entirely clear to me, from the conventions of anti-war fiction as they are laid down in such books as *A Farewell to Arms* and *Catch-22*. The opening is familiar, deliberately so I would guess: "It was a bad time. Billy Boy Watkins was dead, and so was Frenchie Tucker." Other parts of the narrative trade Hemingway's melodramatic understatement for the cartoonishness of *Catch-22* which makes war nearly as exotic and interesting as it is horrifying and insane. Unchecked, this is the tendency which gave us the cute and frolicsome *M.A.S.H.*

These bits of tone are the conventional signposts of O'Brien's novel. Fortunately its heart is to be found elsewhere—principally with Spec Four Paul Berlin at his observation post as he dreams a better ending to the war. His is a dream of release in the form of one Private Cacciato, a deserter, whose departure on foot for Paris leads his comrades out of war in pursuit of him. Back and forth the novel goes between what Berlin dreams, the memories of what he has actually done in the war, and the reality of his present situation. Paul Berlin is a more mediocre and ordinary protagonist than any Hemingway or Heller would have dared create. He is also not equal to his dream of following Cacciato, for unlike Cacciato, Berlin is not innocent enough to walk away; he has willingly touched a grenade in silent agreement with his platoon members to kill their overeager lieutenant. Nor is

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Berlin courageous enough for the act he dreams about. He is average.

In the dream which occupies Berlin's hours on watch he and the rest of his comrades pursue the deserter Cacciato all the way to Paris treading a preposterously fine line between desertion and duty themselves. Their adventures and idylls along the road as Berlin imagines them are often formulaic, designed by the novelist to illustrate this or that about men in war and out of it. They are not particularly successful. What *is* successful and unusual in *Going After Cacciato* is the authenticity of Berlin's wish for peace and a destiny outside war.

The dreamed escape after Cacciato has another virtue connected to its vision of peace; it places the war crimes of the soldiers in brackets. We get to see what these men are like outside the drama of war, and this allows us to answer the soldier's perennial question about his actions: put yourself in my place, what would you or anyone have done? All along the exotic way from Delhi, Teheran and Bonn to Paris these are never more than the most ordinary men with the most conventional understanding of war. It is an understanding which is both corny and banal:

> They did not know how to feel when they saw villages burning. Revenge? Loss? Peace of mind or anguish? They did not know. They knew the old myths about Quang Ngai—tales passed down from old-timers to newcomers—but they did not know which stories to believe. Magic, mystery, ghosts and incense, whispers in the dark, strange tongues and strange smells, uncertainties never articulated in war stories; emotion squandered on ignorance. They did not know good from evil.

All that magic and mystery, the stuff of war stories, comprises practically the whole of their understanding of the war, and of good and evil as well; it conceals what Paul Berlin's dream uncovers—namely that the lessons of war are less mysterious than they are hackneyed and unprofound; they are not in the least illuminating. This is an understanding which undermines the writing of war narratives, and it is probably the reason why the Vietnam sections of the novel are so successfully understated at the same time that they refer to all the expected drama and atrocity of the war.

Eventually some of Berlin's comrades reach an understanding similar to his. When he gets home, one soldier announces, it will be easy to choose between the two women who wait for him; he will pick the one who hates war stories. So, after the dream of pursuing Cacciato subsides into reality and Cacciato is himself just another war story—Missing in Action—Paul Berlin and the others make a separate peace, but it is not Hemingway's separate peace which, without catastrophe, will grow bored with itself and seek another war to feel separate from. It is more radical and complete in its very quiet way. That is what makes *Cacciato's* literary echoes of Heller and Hemingway so misleading and annoying. They are the machinery which gets the novel going and on which it leans from time to time, but they obscure its fundamental differentness.

Differentness of another sort is surely one of the things which has earned Michael Herr's *Dispatches* so much praise. For better or worse most readers of Vietnam books have an interest in being taken past the place where this war is like any other, and *Dispatches* is the first book to convincingly address itself to that place. In this sense it represents a more reflective version of the chapters which originally appeared in *Esquire* and *American Review*. The unspoken sense of the book is that there was something "weird and extra" about this war and this feel of extraness was shared by the dumbest of its soldiers and the most remote onlookers at home. Herr uncovers and exploits the paradox that what was so weird here was also familiar to us all, or to most of us. All we have needed, it would seem, is the book which will provide some external confirmation of this sense, some profound rendering of the war's specialness.

We have of course a profound book on Vietnam in Frances Fitzgerald's *Fire in the Lake*, but there has been nothing which can pass as a definitive telling of the war itself. A good novel like Larry Heinemen's *Close Quarters* which goes a long way toward getting at the war still has in the end to observe the geography of war fiction where epiphany, turning point, and denouement are well established: the crisis of courage, the first kill, the death of a buddy, civilian readjustment. These are the well-worn grooves along which combat fiction has been plotted. In its details *Close Quarters* and another much cruder novel, Charles Durden's *No Bugles, No Drums* come close to *Dispatches* in achievement. The novelist's disadvantage is that this was a war with no center, no decisive battles; it was all circumference and it is therefore difficult to filter the thing through unified plot and point of view.

An earlier and much celebrated novel, *Dog Soldiers*, left the war alone and, straining after some parallels and ramifications at home, telegraphed a significance which was more forced than deserved. Most memoirs like Philip Caputo's *Rumor of War* have been similarly eager to overexplain and digest the experience for their readers. What *Dispatches* does instead is to cover the war and leave the significance up for grabs. Bits of irony and vignettes likely to give us a hint of what was going on are sprinkled throughout the book. The first helmet Herr is issued has been recycled: "Time Is on My Side" is written across it. At another point the correspondent spots a badly shredded flak jacket on which its hapless owner had listed the months already served: "March, April, May (each month written out in a tentative, spidery hand), June, July, August, September, Octobler, Novembler, Decembler, Janurary, Februrary, the list ending right there like a clock stopped by a bullet." There is undigested irony of this sort all over the place adding up to nothing more than the wearing effect of random poignance. The strength of Herr's book is that *that* may be a central experience of the war.

The form of *Dispatches* then is neither war memoir nor personal journalism. Herr has found a method that is both personal and public enough to convey his war's odd combination of familiarity and weirdness. The book is built around the wearisome convention of the acid trip; only in this case the convention is used with some care so that the scenes described, the stories told and people encountered seem not so much the solipsistic experiences of one individual as the fruits of that individual's tapping into a general psychosis. The hallucination always has a familiar feel to it, and Herr is very good at dissolving the psychedelic veil letting us see that the reality he describes only appears to be imagined.

There are certain clichés which have become routine parts of Vietnamese War narratives. In *Dispatches* these are raised through a kind of drug-induced sharpness to emblems, and these emblems are given a special twist which brings their weirdness home. Sometimes the word tragic can be appropriate. Take for instance the matter of atrocities. It comes here, as in so many accounts of Vietnam, in the form of one more American with one more collection of fresh or dried Vietnamese ears. But when in telling this tale the reporter returns the mementos to their grinning collector, the soldier is described as "looking sadder than a monkey." And that is the special twist, for it is not possible to have known anything of this war and its soldiers without

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also recognizing at once that eerie mix of feelings; it speaks volumes. The effect is over and over this familiar one, the domestication of horror. Except for the Vietnam Veterans Against the War film, *Winter Soldier*, nothing gets so directly at the particular chilliness which was the war's lasting gift to its soldiers, many of whom grew to dress and see themselves as outlaws and just as many who told the stories of their atrocities and then re-upped.

The conventional explanation for our supposed lack of good literature on the war and the 1960s in general is the idea that a whole era drenched with rhetoric died of that rhetoric's overexposure—that the language for conveying the time accurately had no strength left for those who wished to use it for reflection or reporting. Of course this is nonsense. Herr's book is a salad of jargon and slang not just of soldiers and countercultural types but from chiefs of staff and intelligence flak catchers as well. Here is a description of Herr's exotic fellow correspondent Sean Flynn: "Sometimes he looked more like Artaud coming out of some heavy heart-of-darkness trip, overloaded on the information, the input! The input!" That's a pack of clichés and jargon (even the invocation of Artaud like the style of Artaud is reminiscent of the period) which works several ways at once to convey and cut through the overripe romanticism an era and its correspondents were prey to.

At other times Herr will move away from this sort of writing to a prose which can report meaningfully on death, even mass death. He does this by transferring the usual focus away from the slaughtered. When he witnesses thirty-seven dead Vietnamese scattered about a field he turns our attention to the soldier with an M-16 firing into the corpses:

> When he finished he walked by us on the way back to his hooch, and I knew I hadn't seen anything until I saw his face. It was flushed and mottled and twisted like he had his face skin on inside out, a patch of green that was too dark, a streak of red running into bruise purple, a lot of sick gray white in between, he looked like he'd had a heart attack out there. His eyes were rolled up half into his head, his mouth was sprung open and his tongue was out, but he was smiling. Really a dude who'd shot his wad. The captain wasn't too pleased about my having seen that.

The heat of this sort of writing often draws deeply from the excitements of war, and in this respect *Dispatches* is at its most conventional and disappointing. Herr does his best to work around that, to disapprove of and undercut the romanticism of war, but he can't always succeed: "Maybe you couldn't love the war and hate it inside the same instant, but sometimes these feelings alternated so rapidly that they spun together in a strobic wheel rolling all the way up until you were literally high on war, like it said on all the helmet covers. Coming off a jag like that could really make a mess out of you." The writing can be very bad too especially when we get a dose of combat eroticism: "In Vietnam an infatuation . . . with violence wouldn't go unrequited for very long, it would come and put its wild mouth all over you." The experiences may be hard to handle, Herr tells us they still are, several years later, but there is never on his part any real turning away from their source.

In its mild way *Going After Cacciato* turns away from war. The violence and atrocities appear in it, but there is no excitement to be got from them, nothing attractive about men in groups, and this may make it the most unusual book to come out of the Vietnamese experience. *Dispatches*, save for its callow faith in the war's profundity, is probably more realistic. It may even be more honest, but in pushing the differentness of the war, it also reveals nothing more than that even without a noble cause Americans can get a kick out of war, can regret its passing and find in the terrible devastation of Vietnam something compelling, even admirable. Herr's Vietnam dissolves into our moral landscape as perhaps he meant it to. And if even he, or especially he, is caught and implicated in this sad morality, unable to get or see beyond it, at least he has not disguised the fact. *Going After Cacciato* focuses on the possibility of life beyond war. In *Dispatches* war is horribly sufficient. □

Professing French

JOURNAL OF REHEARSALS: A Memoir. *By Wallace Fowlie. Duke University Press. 219 pp. $12.95.*

ANNA BALAKIAN

Wallace Fowlie, perhaps the most prolific of Americans who have written on French literature for the past four decades, relates the highlights of his journey through literary friendships and books. So pleasurable is the *Journal* of this eminent critic and scholar that it is likely to send the reader in search of his previous books or of those that he has named as the sources of his own intellectual nourishment, ranging from Dante to Jean Genet.

This is neither biography nor the narrative of human frailties and emotional upheavals we are used to from movie stars, politicians, and the notorious who monopolize the genre. Instead, we follow the stages of a career: discoveries of books, followed by encounters with their authors, among the most famous of France. Whether within the small Vermont town that holds Bennington College where Fowlie had his first teaching assignment, or in New Haven at Yale where he continued, the college environment provided Fowlie's life with amenities that would be the envy of more recent participants in academia. Mentors such as Robert Penn Warren taught the neophyte how to balance his role of teacher with that of writer; he learned the art of theatre from Francis Fergusson, and the power of mystic experience from Visiting Professor T.S. Eliot.

The first ten chapters have a strong cohesion. They trace the humanistic education of a sensitive boy, nurtured on poetry and music as well as in the wonders of the silent clowns and movie pantomimists. Graciously brought up in Boston's suburb of Brookline, Fowlie was educated at Harvard and in France. He first heard French at age 12, and from the language he reached the literature, and then the country.

The rest of the book consists of incidents, related not through chronology but through moods and associations. Fowlie gives us only the heightened moments of his life, sparing us the tedious ones. For those of us groping today for a definition of humanism, Fowlie's journal is a meaningful record of the making of a humanist: he describes an almost vanished life style that allowed the young to spend the first twenty-five years of their lives simply reading and thinking, and becoming so

Anna Balakian is professor of French and comparative literature at New York University; author of The Symbolist Movement: a Critical Appraisal, André Breton: Magus of Surrealism *and other books and articles on poetry from Baudelaire to the surrealists.*

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dedicated to the world of letters as to pass naturally into the role of teacher, returning to others what they had gleaned after enriching it with their own responses. The distinction between the hours of work and those of play is virtually obliterated.

In a sense, the easy entrance of Fowlie into prestigious literary families such as that of the Renans and the Maritains, the welcome he received from celebrities such as André Gide and Jean Cocteau, and the encouragement from scholars such as the surgeon, Henri Mondor, may seem remote and unreal. But the lessons in friendship and the cult of poetry as an integral part of being remain instructive. He loved France because of Mallarmé and Rimbaud, diversely exquisite and elliptic in a country famed for its rationality. He loved French sages whose hospitality and assistance he enjoyed in his literary research. He loved the serenity of France's landmarks and the permanence they conveyed:

> My France is a land I have created out of the mind of Valéry and certain pages of Proust, out of a sonnet of Mallarmé and an essay of Montaigne.

Fowlie is neither of the breed of Hemingway nor of Julien Green if one may take them as representative of two ways in which Americans have lived in France: as exiles surrounded by their own kind, impervious to anything foreign, or as Americans who have indeed become pseudo-Frenchmen. Fowlie fits neither category. He kept his Puritan identity in spite of a touching conversion to Catholicism, but he created for himself a second key to existence. The organized, compulsively programmed writer-teacher developed an empathy during his summers and sabbaticals for the artist prototype: "spontaneous, free, ill-organized, or organized around the impulse of the moment, the life that is perpetual improvisation for the charm and seductiveness of the passing moment."

The friendships Fowlie awakened both at home and abroad in noted writers make us subtly aware that they were recognizing his own merits as critic, interpreter and translator of French literature. But there is no self-praise here, none of the other forms of self-adulation characteristic of memoirs. The refinement of the man creates a reticence about everything except what can deepen the experience of the writer. About ten years of his life remain virtually unrecorded. Whatever that lacuna may hold, Fowlie has managed a format that links the early years of *becoming* with those of *fulfilling*, the serenity and joy of the learning with the equanimity of harvesting memories.

Fowlie gives us the portrait of a teacher in the full dimensions of the word, restoring to the image the dignity, the status, the sense of mission that has been eroding of late. He knew that his door had to be open to those who constantly modify the culture. The cloistered world of the thinker is productive only if he can remain a student. Indeed the life experience through which Fowlie acquired knowledge of people and their books is the rehearsal for the supreme performance that each classroom session becomes for him.

Fowlie's lifelong involvement with learning, teaching, and translating a second culture gives new life to the faded term "intellectual," and may tantalize the monolinguists in our midst. It is certain to strengthen the conviction of those who still believe that teaching is a noble profession. □

FILMS

ROBERT HATCH

If my office were not a mere five or six blocks from where Paul Mazursky filmed the greater part of *An Unmarried Woman*, I might not have come from the picture impressed primarily by the fact that West Broadway, if capably photographed, looks exactly like West Broadway; or that, if you stage an opening in a SoHo gallery, the impression given will be that of a SoHo gallery opening. But at bottom I'm not convinced that the accident of familiarity is what gave me a sense of being exposed to an exercise in verisimilitude, a quality not to be confused with truth. I don't know anyone like the principals in the film, and I'm not at all persuaded that such people exist; but they are certainly facsimiles of the East 70s joggers who trot past me in the ads for rallye-striped running shoes. I've never been in their apartments, but I've seen their furniture in the "Home" section of *The New York Times*, and they gather to eat and drink in those two- or three-star places I read about in the restaurant guides but avoid for want of an expense account. As for their "interpersonal relations," I cannot remember how many psycho-journalistic accounts of emotional fender smashing I have started to read. Therefore, I believe I know who Mazursky's so familiar, but so peculiar, beings are—they are media events.

The heroine of this exercise (Jill Clayburgh) is detached from marriage when her husband (Michael Murphy) leaves her and their teen-age daughter for a younger woman he met while buying a shirt at Bloomingdale's. He

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JANUARY, 1917
(Translated from the Russian of Anna Akhmatova)

The snowdrift doesn't collapse, it's packed hard
as we walk its crest to my white, mysterious house,
aware of how quiet we are, aware
of the tenderness in the silence between us.
No song ever sung was sweeter than this—
this dream I am having, asleep, awake . . .
how twigs snap back when our legs drag past bushes,
how little the noise of your spurs is, how delicate, clear.

Stephen Berg

tells her of this change in their relationship as they stroll up West Broadway during the lunch break from her studio job. He sobs desperately at the thought of the pain he is causing; she vomits, but whether from shock or from the spectacle he presents I was not sure. The point of interest about this trauma of modern urban living is not that he is walking out but that she should have put up all those years with a women's lib example of male arrested development.

Thus forsaken, the wife confers with a trio of female friends who, with her, comprise a club for mutual emotional support and spiritual uplift. Their conversation—and indeed most of the conversation in the film—is directed primarily to determining whether this one and that one, including themselves, their acquaintances, husbands and lovers, are or are not good lays. They keep assuring one another that they are vitally involved in the widest possible spectrum of contemporary interests, but their chatter has a doleful way of zeroing in on the orgasm—an experience I by no means underrate, but I do protest that, for purposes of character delineation, it is limited.

These sorority girls, for all their up-to-date expertise on copulation, prove no more help than Job's comforters, and Erica, the wife, seeks professional advice. By another coincidence, I know the psychiatrist; her name is Penelope Russianoff, she is in fact a psychiatrist, and I congratulate her on the confidence with which she carries out what I believe to be her first screen assignment. She very sensibly tells her patient that it is normal to feel out of sorts when a husband, even a blob of a Wall Street junior executive husband, leaves you flat. She then advises "a holiday from guilt," and a plunge into "the stream of life." (I wonder if my friend spoke these lines of her own accord or had them imposed upon her.) Erica interprets this counsel as a recommendation that she become a Greenwich Village pushover, but by the greatest good luck the second bed she enters proves to be occupied by Mr. Right (Alan Bates), a bearded British painter who creates large abstract works by impetuously pouring pints of acrylic paint across hammocks of canvas. It was invigorating to watch Bates swooshing away with the paint pots, talking the while about love and destiny, but I believe his art is several seasons behind the times.

That's the film, and I think it too is out of date. Verisimilitude is no longer a very hot property. A year or two ago, the galleries were full of "living" sculpture, figures in plaster or synthetic resins, posed in attitudes of utter informality and so exact of execution that one had an eerie desire to step on their toes, just to make sure. This "school" did not last long, partly because Madame Tussaud was really better at waxworks, but mainly because manikins are boring the instant the illusion breaks down. That's the trouble with *An Unmarried Woman*—drama is supposed to recall the substance of people, not to put on display their plastic imitation.

"Those Spaniards don't kid around," said my wife as the lights came up after the showing of *Furtivos* (Poachers), the first work by Jose Luís Borau to be shown in this country. That's about as accurate a summation of the picture as you could manage in one sentence. Most of us have learned to "kid around" the worst things that happen to us, ducking the punches when we can and rolling with them when we can't. No doubt we are right to do so—there are disadvantages to using nemesis as a household utensil and Borau is well aware of them. Nevertheless, there is something wonderfully clarifying about implacability; it lets one measure how much we depend on evasive action and symbolic gesture for the sake of survival. Borau's people may live short lives, and you might agree brutish ones, but they are not apt to suffer the neuroses of suppressed feelings.

The picture is constructed as two triangles: one composed of son, mother, mistress; the other of husband, wife, lover. Angel the Poacher, who is both son and husband, is the interlocking apex of the two structures. The desperate emotional battles of these peasants are played out against the larger background of class warfare, where the enemy is represented by four high bureaucrats of Franco's state, who come by limousine to the woods for the hunting season.

By analogy, the film is more an etching than a painting. Its detail is rich, but built of strokes that are clean, quick and very sharp. Even the eroticism which, unlike the commercial variety, may make your blood stir, is efficient to the purposes of the narrative. As a result, the film deals with a great deal of material in what for these days is a comparatively short running time (about an hour and a quarter). And when near the end a priest, adjusting his vestments, turns to Angel and says, "My son, what is the occasion for this mass?," and Angel replies, "for my intention," you suddenly realize that you know more than you would have thought possible about this utterly foreign, compact, neat, almost impassive (his intelligence shows in a reluctant smile) and wildly dangerous young man. Borau himself plays Angel; his supporting cast is a match for his intensity.

I could find fault in retrospect with the somewhat pat symbolism Borau employs, or with his rather explicit foreshadowing, but that would be because a reviewer is supposed to notice such things. In fact, the pattern of the narrative is obvious only in retrospect; while the film runs, it is as unpredictable as life usually is, only a good deal more clear—the logic is absolute, that is to say, mad. As for the story itself, in this case I think it is better to let the author tell it in his own way. □

THEATRE

HAROLD CLURMAN

Sam Shepard's *Curse of the Starving Class* is ungainly and wonderful (Public Theatre). Its faults are part of its virtues. Shepard improvises on a theme; at times he seems to leap or meander away from it. Each of the improvisations or "riffs" is provocative and appears to throw the general structure out of kilter. Still there is imagination and a particular sort of poetry throughout, ambulatory with the long stride of a robust youth on the loose.

In Shepard's full-length plays, *Operation Sidewinder, The Tooth of Crime,*

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and the present one, he seems not to know exactly what he is saying, but that is because he is trying to say too much. There is constant invention, though it occasionally strikes us as outright negligence; he takes off in all directions.

The overall mood is not simply American but somehow Californian of the smaller towns and their byways—certainly not of the affluent West. There is a feeling for the land, insecure, restless, ranging far and wide, questing and yet somehow rooted or desiring to be rooted in the native earth. The play's lightheaded antics sometimes turn to scenes of roaring drunkenness and then to doggedly folksy common sense.

There are too many narrative details. Shepard is not strong on straightforward storytelling: his plots resemble eccentric yarns. Moving through the play's trek, we find Ella, a woman initially fascinated by Weston, a wayward, spunky, keen-witted, ex-war pilot and now her distressingly irresponsible and inebriate husband. She has two children by the man, a youth named Wesley and a pubescent daughter named Emma. After the war Weston became a worker on the land. He has earned apparently enough to buy two cars; he owns a ramshackle house; he keeps a few sheep. Every once in a while he goes off on a toot, disappearing for days and comes home to his nakedly furnished place sodden and fighting mad.

Her people, Ella says, are neither rich nor, though the larder because of Weston's improvidence is often empty, of the starving class: they are "in between." Guileless in practical affairs, Weston has been hoodwinked into buying useless desert land by a crooked real estate agent. Ella, thoroughly addled by the anarchy of the family's existence, "wants out"; she plots to sell their dwelling place and run off somewhere—to Europe perhaps—away from it all. Wesley wants to stay put, to have a home; so does his sister Emma. Weston has borrowed money from gangsters (he has no doubt bought his cars on time), and since he can't pay his debts, the gangsters seek to kill him. He escapes to Mexico.

There is "poison" in him, says Weston: it's in the family. The infection stems from his and his forebears' rootlessness, bred of the uncertainty of a hand-to-mouth economy, widespread in, almost typical of, the rural far West. With the accumulation of domestic accidents and upheavals—plenty one day, near starvation the next—his father filthy drunk and then clean, steady, reasonable Wesley goes plumb mad. Emma goes haywire, is jailed, breaks out, steals cash and determines to take up a life of crime, much easier than living in the shambles of her home.

What is communicated is despair, which Shepard expresses in hilarity: the "fun" of so much of American life! His people, because of their catch-as-catch-can "incomes" and their ignorant and generally romantic dreams of an easy life, must go berserk and be destroyed, as ultimately their exploiters will be. Shepard employs the image of an eagle who flies off with a cat clawing at its captor till both crash to their destruction. Nothing around these innately decent people provides stability of either goods or thought. They are thus doomed to a vagrancy which must end in disaster for everyone.

None of this is spelled out; everything is implicit in one "crazy" scene after another. Speech is either vernacularly humorous or metaphorical. Shepard's talent is inchoate, delicious and disturbing. His artistic impulse is toward the "mythical" and is, by indirection, socially meaningful.

The play is acted under Robert Woodruff's direction in perfect accord with the quality of its writing. Remarkably arresting in both his crudity and tenderness, James Gammon, rugged, comic and pathetic as Weston (in all senses a Westerner!), is a find. Olympia Dukakis, exasperating and delightfully screwy as Ella, creates a reality that borders on fantasy. Ebbe Roe Smith as Wesley and Pamela Reed as Emma are respectively scary and darling. Santo Loquasto's semi-stylized setting, shiveringly bare, speaks volumes of human void.

The entire show is a "gas"; wackily farcical and heartbreaking.

David Mamet's *The Water Engine* which I reviewed in *The Nation* of January 28, has now moved from the Public Theatre to Broadway (Plymouth Theatre). Because the play is only an hour long, a twenty-minute curtain raiser called *Mr. Happiness* has been added. An orchestra seat costs $15.

Mr. Happiness kids the old-time advice-to-the-lovelorn and to the otherwise troubled kind of radio programs. Such "entertainments" may still exist in certain newspapers, but are heard very rarely now, I believe, on the air. For his purpose Mamet has made *Mr. Happiness* a radio talk show which connects it with *The Water Engine*. The new piece has several funny lines in the letters Mr. Happiness receives and in the gentleman's inane replies. The trifle will neither add to nor diminish Mamet's reputation.

In my original review I called *The*

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The resolution of conflict in self is like the making one of opposites in art.—Eli Siegel

ELLEN REISS:
CRITIC,
CONSULTANT,
PERSON

A Talk about Life and Conviction

Sun., March 26, 1978 8:30 P.M.

Ellen Reiss, co-editor with Martha Baird of the recently published *The Press Boycott of Aesthetic Realism: Documentation,* and student of Aesthetic Realism with its founder, Eli Siegel, will talk of her life and the meaning of her study.

"Tonight," says Miss Reiss, "I will use my life to show what I have learned from Aesthetic Realism and Eli Siegel: what it means to be a true critic."

Ellen Reiss is Class Chairman of Aesthetic Realism and is a consultant for women with the trio First Person Plural. She has taught English literature at Queens College, Hunter College, and now teaches the Aesthetic Realism Approach to Poetry at the Aesthetic Realism Foundation. She will tell, in her talk, why she sees the following statement of Eli Siegel as "the kindest and most important single sentence in the world":

All beauty is a making one of opposites, and the making one of opposites is what we are going after in ourselves.

The purpose of the life of Ellen Reiss and of her talk is to have Aesthetic Realism studied by all people, to have Eli Siegel seen fairly and beautifully—because they stand for what is most true, most beautiful, most immediately needed in our lives.

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Water Engine "a clever sketch." I must now amend my first impression by saying it is a *very* clever sketch. It presumably shows how the virulent malpractices or criminality of business ("monopoly capitalism!") are vulgarized through the unfeeling routine of radio transmission. What comes through is not so much a social statement as a joke about the mechanics of radio and the indifference of the people engaged in it, their dissociation from the material with which they deal. But the joke succeeds so well that nothing much is left of the intended indictment: we lose sight of the supposed subject matter.

The play is very well done: efficiently acted by a well-chosen cast, with an admirably designed setting by John Lee Beatty, directed with humorous expertise by Steven Schachter and emotionally heightened only in Dwight Schultz's well-characterized acting as the machine inventor and the victim of "business" racketeering.

At the Plymouth the play is visually clearer than it was at the Public, but essentially no better. I do not mean to detract from the esteem in which Mamet is held; I only mean to define the nature of this particular item of his work. And I look forward to his future writing. □

ART

LAWRENCE ALLOWAY

Sculptors have a tendency to seek fame by means of works of great size executed in durable materials. Artists like Mark di Suvero, Richard Serra, Chuck Ginnever and Robert Grosvenor claim permanence by heftiness, but there are alternatives to massive hardware and boastful presence. For example, the modular metal floor pieces of Carl Andre occupy interior space insistently but not oppressively. Flatness in sculpture is not only still and calm, it is polemical at a time of inflated plasticity.

Another way out of the oppression of matter in sculpture is by cutting down on its duration, working for specific occasions rather than for a hypothetical eternity. Otto Piene's structures of polyethylene tubing inflated by helium, like his 1,600-foot rainbow revealed at the closing of the 1972 Munich Olympics, are ceremonies rather than monuments. Sol LeWitt's wall drawings are also intended for a short life: the fine anthology of them at the Museum of Modern Art will be effaced when the show closes on April 4. His drawings are impermanent but repeatable; they can be done again, following his specifications, so that artistic survival is not a matter of preserving a unique thing.

Recently there have been numerous examples of sculpture conceived in relation to specific places. Sculpture shows in battered SoHo galleries during the early 1970s were often of this sort and so are many of the projects to be seen at P.S. 1, run by the Institute for Art and Urban Resources in Long Island City. These are signs of dissatisfaction with the traditional sculptor's preoccupation with the mass of an internally self-sufficient object that carries its meaning with it, as it were, from one site to another. The sense of sculpture as a concrete object has relaxed under the pressure of environmental interests.

At the Nobé Gallery (until March 18) there are works by Cecile Abish, Kazuko and Lydia Okumura. The installation is conceived in response to a particular place and the work has been carried out on the spot. The gallery is on the top floor of the Fisk Building, 250 West 57 St., with chopped-up rooms but good light. Kazuko is showing a "Triangle String Construction": from a white triangle on the floor white threads are carried up to a central spine of nails. Floor and wall are joined by a turning, three-dimensional fan of taut threads, which open or solidify according to the spectator's viewpoint. It is a brilliant occupation of the architectural 90-degree angle between wall and floor. (Kazuko's development of her acute responsiveness to room space may relate to the fact that she is one of the artists who carried out LeWitt's wall drawings for him.)

Okumura has painted white and gray areas on the walls of the entrance room of the gallery, cued by the existing shapes and color. Within this illusionistic shuttle of planes a thin red line runs at eye-level; it is partly painted, partly three-dimensional. The difference is hard to keep in focus and that difficulty introduces a tense spatial play. Unfortunately, Cecil Abish is not represented by an installation, presumably because she was busy in Dayton, Ohio preparing one of her "marble works" for the art gallery of Wright State University. These pieces, named in ironic homage to classical Greek sculpture, are essential to any discussion of sculpture as installation.

A marble work has no set form; it exists only as it is adapted to the available site. This does not mean that anything goes, simply that the work is conceived as a system that the artist operates rather than as an object concluded in the studio. Each phase of the sculpture's appearance is site-specific, with limits acknowledged in time as well as space. Abish's elements are homosote panels, cut to a standard size; and marbles, children's marbles. The marbles constitute a scattered field of small bright particles spread over the floor and the panels are segments of a grid, which includes negative areas, the size of the panels but empty of marbles. With these modest means Abish has invented a flexible system for the temporary occupation of given spaces that includes systematic and random elements. There is in environmental sculpture a great care for spectator participation: witness the ways in which Abish sets up the viewpoint, a border or a path from which to command the work. The art gallery at Wright State University is a two-level space which, given Abish's responsiveness to site, should make the exhibition a spectacular occasion.

Some of the interests of what used to be called Abstract art have been subsumed under other definitions, other categories. The sense of *thereness*, of a concrete object, so important to Abstract art, has been dissolved into the sense of domain. Twenty years ago sculptors were critical of their traditional dependence on pedestals, which intervened between the space of the sculpture and the space of the spectator. One way to get rid of the base was to work large, so that the dilated object entered our space competitively. Another tactic was horizontal extension, in which iron and wood pieces were stretched to resemble ploughs or fallen tree trunks. In retrospect much of this work seems transitional, somewhere between object-centered and environmental sculpture. Sculpture as room-scale installation seems a logical outcome of getting off the base.

The interpenetration of sculpture and environment, in terms of alliance rather than domination, characterizes a good deal of the recent work. Apart from the artists named above there is a range that includes Alice Adams, Alice Aycock and Siah Armanjari (architectural carpentry); Lloyd Hamrol's low walls; Anne Healy's fabric pieces; Mary Miss (as in her outdoor project, now suspended, for the Nassau County Museum); Ree Morton (with her nursery Stonehenges); Robert Rauschenberg's "Jammers"; Alan Sonfist's forthcoming "Time Landscape" in La Guardia Place, Manhattan, and Eileen Spikol's "leaners." □

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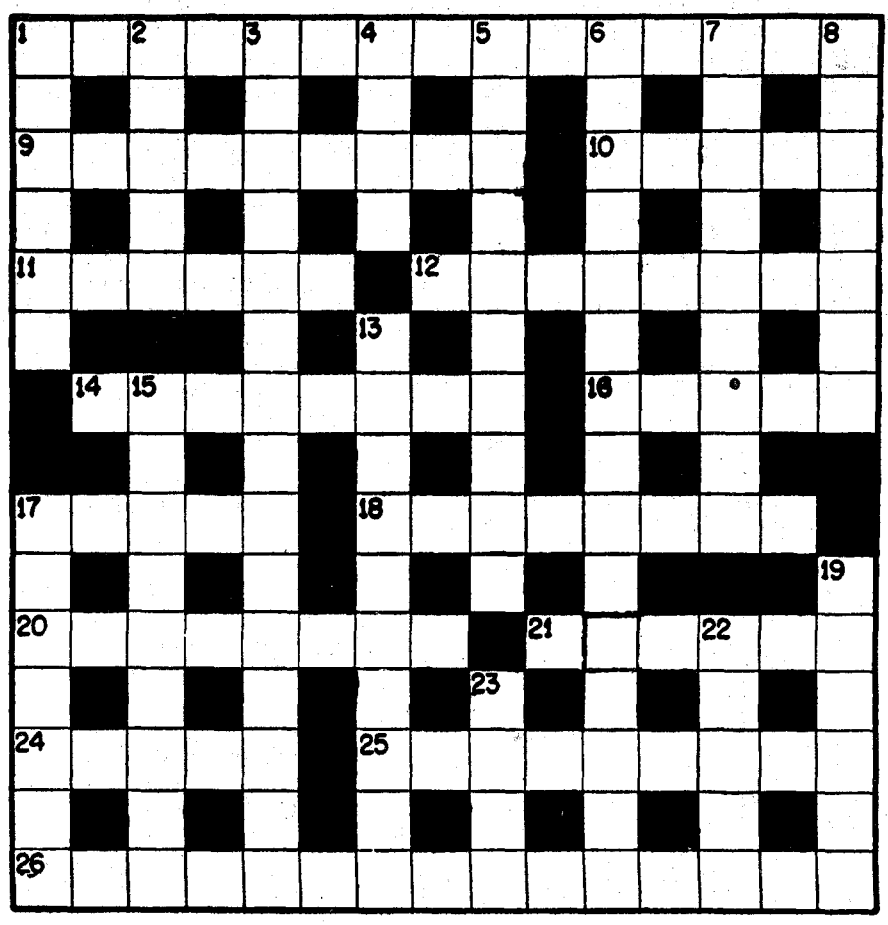
Crossword Puzzle No. 1719

FRANK W. LEWIS



ACROSS

1 You can't say the NATION has this if you're doing it, but it traditionally typifies the happy home. (5,1,5,4)
9 Proving Uncle's cut is sort of juicy. (9)
10 Atropos, etc., get loud at a couple of points. (5)
11 To the listener, your version when old and dirty. (6)
12 Erodes around the middle, and elements may change the surface if something does (8)
14 In which things are held in suspension. (8)
16 Clubs possibly associated with the press, or old prisons. (5)
17 In brief, a state cut off by the old dance. (5)
18 Made mad by some of that punk stuff? (8)
20 The last word, perhaps, can show you willing to act. (8)
21 Stick with the statement, if you're white! (6)
24 I hit a different place, when less than half an island. (5)
25 Acting irresolutely, I'd bring it back to the circle. (9)
26 Some cut! (That's what they may make between entrances!) (6,2,7)

DOWN

1 Tables might be like birds. (6)
2 Six with the automobile, thus helps out with service. (5)
3 In general, it's what Alice's Duchess could be accused of! (7,8)
4 A fairly large number cut or crush and grind. (4)
5 Vacationers might be, in a Shute novel. (2,3,5)
6 Implying protection in what some consider a racket? (It might take a lot to make it.) (6,2,7)
7 You wouldn't hope for a place putting your money so? Exactly! (2,3,4)
8 It may be assumed one does when told to cease. (7)
13 Deserving. (8,2)
15 The dance takes an age to get around in! (One might get ahead on points.) (9)
17 Chap upset with the rig misplaced—that's clear. (7)
19 This famous cruise ship was a real dog! (6)
22 When a Frenchman has the last word, this may be it! (5)
23 Auricular ring to shake. (4)

SOLUTION TO PUZZLE NO. 1718

ACROSS: 1 Atavism; 9 Aligned; 10 Brigade; 11 Rotor; 12 and 13 Carapace; 14 Macadam; 16 Success; 18 and 1 down As tight as a drum; 21 Retrial; 24 Overt; 26 and 5 Off the cuff; 28 Nosebag; 29 Stamina; 30 Sinuses; 31 Dredged. DOWN: 2 Asiatic; 3 and 25 Inner tubes; 4 Modicum; 5 Tabards; 6 Erica; 7 Unaware; 8 Feeders; 15 and 27 Doghouse; 17 and 18 Catamounts; 19 Treason; 20 Troughs; 21 Refused; 22 Inuring; 23 Leeward; 27 Heave.

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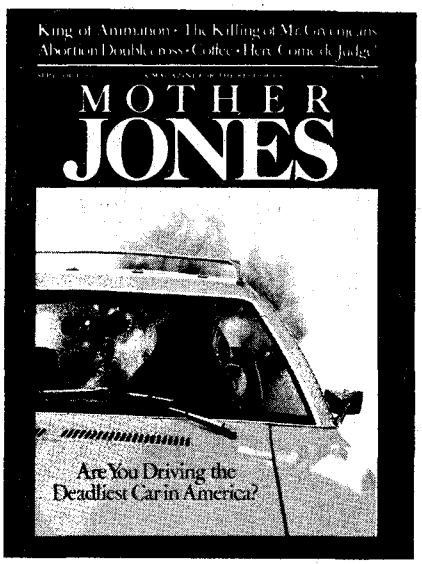

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